The purpose of this Agreement is to state the relationship between Transputec Computers Plc and The Customer.

TERMS AND CONDITIONS

1.   Definitions
The following definitions shall apply to this Agreement and all of the attached Schedules:
Affiliate(s) – means in respect of any Party, that Party's holding company and any subsidiary of such holding company or the Party in question;
Customer – means the customer detailed in the Intelefile Order Form;
Effective Date – means the date the customer signs the Order Form;
Event of Force Majeure – means any circumstances beyond the reasonable control of a party including strikes, lockouts or labour disputes (save for strikes, lockouts and labour disputes involving such party's own employees), shortages of raw materials (except where such shortage arises from the acts or omissions of such party or where such circumstance is otherwise under such party's control), civil commotion, riot, invasion, war, threat of or preparation for war, acts of God, malicious damage, compliance with any law or government order, rule, regulation or direction or any overriding emergency procedures, accident, breakdown of plant or machinery (except where such breakdown arises from the acts or omissions of such party), fire, flood, and storm;
Hosting System – means a computer system that is used to run the Intelefile hosted application;
Material Breach – means any breach expressed as a Material Breach in the Agreement or any breach which materially or substantially affects the performance and/or delivery by either party of their obligations under this Agreement including, without limitation, the Services;
Order Form – means the order document published by Transputec Computers Plc and used by the customer to engage the services of Transputec Computers Plc;
Transputec Computers Plc – means Transputec Computers Plc, Transputec House, 19 Heather Park Drive, Wembley, London HA0 1SS; Tel: 020 8584 1400, Fax: 020 8584 1321;
Services – means the services to be provided by Transputec Computers Plc to The Customer in accordance with the terms of this Agreement;
Intelefile Application – means the online document retrieval software created and marketed by Transputec Computers Plc under the name Intelefile;
Intelefile Product Suite – means a suite of software including the Intelescan scanning and Intelefile online document retrieval software;
Intelescan definition – means a scanning application published by Transputec Computers Plc under the name Intelescan;
Service Definition Document – means the latest version of a document prepared by Transputec to assist The Customer with using the service containing processes, procedures and support information, as may be amended from time to time.

2.   Intentions
In entering into this Agreement, it is understood by both parties that all costs for the use of the Intelescan product suite, data processing and access and maintenance of the Intelefile application are included in issue 0701 of the Intelefile Pricing.

3.   Performance of Services
In consideration of payment by The Customer of the Fees, Transputec Computers Plc shall provide the Services to The Customer in accordance as described in the Service Definition Document.

4.   Notice of Delay
Transputec Computers Plc agrees to promptly notify and discuss with The Customer any factor, occurrence or event coming to its attention that may occasion any material delay in delivery of the Services. The giving of notice itself shall not affect Transputec Computers Plc's contractual obligations hereunder.

5.   Application Software Licence
5.1.   Transputec Computers Plc grants The Customer a licence to install, access and use the Intelefile Product Suite. The Customer's right to use and access the Intelefile Product Suite in accordance with this Agreement terminates automatically upon termination of this Agreement. All software components of these applications shall remain the property of Transputec Computers Plc upon termination of this Agreement.
5.2.   The Customer may not:
    (a)   disclose the results of any benchmark tests of the software to any third party without Transputec Computers Plc's prior written approval;
    (b)   work around any technical limitations in the software;
    (c)   reverse engineer, decompile or disassemble the software, except and only to the extent that applicable law expressly permits, despite this limitation;
    (d)   publish the software for others to copy;
    (e)   rent, lease or lend the software.

6.   The Customer Responsibilities
The Customer acknowledges that The Customer is expected to supply telecommunication services connecting users to the Internet in order to access the Intelefile Product Suite at sites where users are located. Transputec Computers Plc is not responsible for these telecommunication services or hardware providing such services.

7. Warranty/Remedy

7.1. Transputec Computers Plc warrants that it shall at all times:

    (a) during the term of this Agreement employ personnel to provide the Services who have suitable skills, qualifications and experience to provide the Services and who are managed by suitably experienced management personnel.

    (b) Transputec Computers Plc warrants to provide the Services with reasonable care and skill and shall perform its obligations under this Agreement in a timely and workmanlike manner and in accordance with current practice in and the standards of the UK computer services industry at the relevant time.

7.2. The Customer agrees to provide Transputec Computers Plc reasonable notice of non-conformity or error. Except as otherwise provided in this Agreement, Transputec Computers Plc's liability for breach of this warranty will be to either cure the non-conformity or error in a reasonable time or to repeat the Service at no additional charge to The Customer unless the parties agree, in writing, to an alternative cure method.

7.3. Transputec Computers Plc agrees to use commercially reasonable endeavours to keep the Services available at all times, but cannot warrant that Services will be uninterrupted or error free. Service may be interrupted for brief maintenance periods in accordance with schedules provided to The Customer.

7.4. Transputec Computers Plc shall warrant the telecommunication services connecting the Hosting System to the Internet only to the extent that Transputec Computers Plc is given express warranties from the third party telecommunications vendor(s). Transputec Computers Plc is not responsible for delays or service outages to the extent caused by telecommunication problems if outside of any express warranties provided by any third party telecommunications vendor, provided that Transputec Computers Plc uses reasonable endeavours to mitigate the effects of any telecommunications problems (including, without limitation, liaising with any relevant parties to procure that the problem in question is remedied as soon as is reasonably practicable).

8. Limitation of Warranty

Except as expressly stated in this agreement, Transputec Computers Plc disclaims all other warranties express or implied including any warranties of merchantability or warranty of fitness for a particular purpose. Transputec Computers Plc will use reasonable endeavours to co-operate with other software suppliers to resolve any errors in operating system software or other third party products.

9. Limitation of Remedies

9.1. Nothing in this Agreement shall operate to restrict either party's liability for death or personal injury resulting from any act, omission or negligence of that party or its officers, agents, employees or sub-contractors.

9.2. Neither party will have any liability to the other for any claim to the extent that the same is or can be characterised as a claim for (or arising from):

    (a) loss of revenue or profits;

    (b) damage to tangible property

    (c) punitive damages; or

    (d) indirect, consequential or special loss or damage,

    (e) loss of anticipated savings

regardless of the form of action, whether in contract, strict liability or tort (including negligence), and regardless of whether the first named party knew or had reason to know of the possibility of the loss, injury, or damage in question.

9.3. Transputec Computers Plc's liability in respect of all causes of action arising out of or in connection with this Agreement (whether for breach of contract, in negligence or any other tort, under statute or otherwise at all) shall not, in the first twelve months of this Agreement, exceed £2,000 and, thereafter shall not exceed the amounts paid to Transputec Computers Plc under this Agreement in the twelve month period prior to the occurrence of the event giving rise to such liability.

10. Term and Termination

10.1. This Agreement shall come into force on the Effective Date of Agreement and, unless terminated earlier pursuant to this clause 10 or any other provision of this Agreement, shall remain in force for a period of twelve (12) months (the "Initial Term"). After the expiry of the Initial Term, this Agreement shall continue for consecutive periods of twelve (12) months (each a "Term Extension"), provided that in each case, a revised fee arrangement for the duration of the Term Extension has been agreed by the parties prior to commencement of such Term Extension.

10.2. Either party may terminate this Agreement by giving to the other not less than one (1) month's written notice; such notice to expire at the end of any Term Extension.

10.3. The Customer may at its absolute discretion terminate this Agreement during the Initial Term by:

    (a) giving to Transputec Computers Plc one (1) month's prior written notice; and

    (b) paying to Transputec Computers Plc the Monthly User Access Fee for each of the remaining months of the Initial Term ("Initial Term Balance Payment").

10.4. Either party may terminate this Agreement forthwith by notice in writing to the other party if the other party:

    (a) commits any Material Breach of the terms of this Agreement and, if the breach is capable of remedy, fails to remedy that breach within 30 days; after receipt of written notice from the innocent party identifying the breach and requiring its remedy;

    (b) is unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or enters into compulsory or voluntary liquidation (other than for the purposes of effecting a reconstruction or amalgamation in such a manner that the company resulting from such reconstruction or amalgamation shall agree to be bound by and assume the obligations of the relevant party under this Agreement) or compounds with or convenes a meeting of its creditors or has a receiver or manager or an administrator appointed or ceases for any reason to carry on its business.

10.5. Notwithstanding anything to the contrary contained in this clause 10 either party may terminate this Agreement at any time by giving not less than one (1) month's notice to the other in the event that control of the other party is acquired by any person who is at such time a direct competitor of The Customer or Transputec Computers Plc (as the case may be) or if any other change takes place affecting the ownership of or management of either party which may reasonably be regarded as prejudicial or potentially prejudicial to the provision of the Services hereunder, where for the purposes of this clause, "control" shall be determined by reference to the provisions of s.840 of the Income and Corporation Taxes Act 1988.

10.6. For the avoidance of doubt, The Customer shall make no Initial Term Balance Payment if termination is effected under clauses 10.4, 10.5 or 17.2.

10.7. 10.7 Termination of this Agreement, howsoever caused shall not affect or prejudice any right to damages or other remedy which the terminating party may have in respect of the event which gave rise to the termination or any other right to damages which any party may have in respect of any breach of this Agreement which existed at or before the date of termination;

11. Payment and Default

11.1.   All fees and charges are specified in the Intelefile Pricing sheet. Transputec Computers Plc will invoice the Set-up Fee upon signing of this Agreement, thereafter monthly invoices will be sent to The Customer at the end of each billing period. All payments are due within fourteen (14) days net from the date of invoice.

11.2.   Transputec Computers Plc reserves the right to levy an interest charge on late payments of 6% per calendar month for payments more than fourteen (14) days old until settled in full.

11.3.   Transputec Computers Plc reserves the right to suspend Services if payment in full is not made within ten (10) days after receipt of written notice of non payment.

12. Termination for Non-Payment

If The Customer does not pay charges when due and any such material default is not cured in thirty (30) days following written notice, then Transputec Computers Plc shall have the option to terminate this Agreement with an additional thirty (30) days written notice. Any termination of this Agreement will be in addition to any other remedies available to Transputec Computers Plc.

13. Taxes

All prices in this Agreement are expressed net of VAT. The Customer agrees to pay all VAT or other taxes arising under this Agreement, unless otherwise exempt.

14. Proprietary Rights

Transputec Computers Plc agrees that all information supplied by The Customer remains the property of The Customer or other parties that may have interests in it. The Customer agrees that any software programs or technology made available as part of any Service, and the copyrights, trademarks, ideas, concepts, know-how and techniques possessed or used by Transputec Computers Plc remain the exclusive property of Transputec Computers Plc and its suppliers, as applicable.

15. Relationship of Parties

Transputec Computers Plc and The Customer are separate and independent entities acting as independent contractors.

16. Regulatory Compliance

The Customer represents and warrants that all information provided to Transputec Computers Plc for processing is freely exportable under a general export licences and any applicable regulatory approval is the sole responsibility of The Customer. Any material that could be considered indecent, obscene or offensive, or other material that is contrary to the laws of England and Wales, is prohibited.

17. Impracticability

17.1.   If either party is prevented or delayed by an Event of Force Majeure from performing any of its obligations under this Agreement and promptly notifies the other party, specifying the matters constituting the Event of Force Majeure and specifying the period for which it is estimated that the prevention or delay will continue, then the party affected shall not be liable to the other for failure to perform or for delay in performing such obligations, but shall nevertheless use all reasonable efforts to resume full performance of its obligations.

17.2.   If the Event of Force Majeure continues for more than thirty (30) calendar days following notification, the party not affected by the Event of Force Majeure may terminate this Agreement by giving not less than thirty (30) calendar days prior notice to the other party, but the notice of termination shall be of no effect if the party affected by the Event of Force Majeure resumes full performance of its obligations before the expiry of the notice period.

17.3.   During any period in which Transputec Computers Plc's performance of the Services is prevented or delayed by an Event of Force Majeure:

(a)   the amount of the charges shall be reduced by a fair and equitable amount in respect of that part of the Services which Transputec Computers Plc is unable to perform; and

(b)   The Customer shall have the right, where such Event of Force Majeure persists for thirty (30) calendar days following notification received from Transputec Computers Plc pursuant to clause 17.1, by giving 24 hours written notice to Transputec Computers Plc at The Customer's own cost to perform, or obtain performance by a third party of, the relevant part of the Services affected by the Event of Force Majeure for such period as the Event of Force Majeure persists.

18. Assignments

Neither The Customer nor Transputec Computers Plc may assign or otherwise transfer its rights or obligations under this Agreement (except to its successor pursuant to a merger, consolidation or sale of all or substantially all of its assets) without obtaining the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed except that either party can assign or transfer its rights or obligations to its Affiliate(s).

19. Indemnification

19.1.   Subject to the provisions of Clause 9.1, Transputec Computers Plc will indemnify The Customer and keep The Customer indemnified from and against any and all claims made against The Customer alleging that the normal use of the Intelefile Application permitted under this Agreement infringes the Intellectual Property Rights of a third party. Such indemnity will include all losses, costs and expenses incurred by The Customer as a consequence of such claim.

19.2.   Immediately upon becoming aware of a claim which might give rise to any liability on Transputec Computers Plc to indemnify The Customer under Clause 19.1 (a "Claim"), The Customer will: (a) give written notice of the Claim to Transputec Computers Plc; (b) allow Transputec Computers Plc to assume the control and conduct of the defence and settlement of the Claim; (c) at its own expense give such reasonable assistance as may reasonably be required by Transputec Computers Plc in the defence, settlement or compromise of the Claim.

19.3.   In connection with the control or conduct of the defence and settlement of the Claim Transputec Computers Plc will:-

(a)   keep The Customer informed of relevant matters;

(b)   make no settlement of the Claim without prior notice to The Customer.

19.4.   In the event that a final judgment is obtained in respect of the Claim against The Customer, Transputec Computers Plc may at its own option and expense:

(a)   procure for The Customer the right to continue using the Hosting System in the manner contemplated by this Agreement; or

(b)   replace or modify the Hosting System so that it no longer infringes the rights of any third party (provided that any such replacement or modification of the Hosting System will not materially affect the functionality of the Hosting System); or

(c) in the event that neither of the options (a) and (b) above is available, Transputec Computers Plc may terminate this Agreement.

19.5. The indemnity contained in Clause 19.1 will not extend to any Claim which arises as a result of The Customer's use of the Intelefile Product Suite otherwise than in accordance with the terms and conditions of this Agreement

20. The Customer's Right to Possess Data and Right to Make Copies

The Customer warrants that it has the legal right to digitise, transmit and copy all materials that are or will be submitted to Transputec Computers Plc for storage and retrieval under this Agreement. The Customer agrees to indemnify and hold Transputec Computers Plc harmless from losses and expenses (including reasonable legal fees) incurred on account of breach of this warranty.

21. Confidentiality

21.1. Information disclosed under this Agreement (hereinafter known as "confidential information") shall include, but not be limited to, commercial, financial, technical, operational, marketing, promotional, or such other information, in whatever form, which concerns the business and affairs of the disclosing party and shall include confidential information disclosed orally or in writing and which would appear to a reasonable person to be confidential or proprietary.

21.2. The receiving party agrees to hold all confidential information in trust and in confidence and not to use it for any purpose other than the contemplated purpose.

21.3. No right or license is granted by the disclosing party to the receiving party and the information remains the property of the disclosing party at all times.

21.4. Neither party shall without prior written consent of the other, disclose to any third party any confidential information obtained from the other in pursuance of this Agreement other than as required to fulfil the obligations of this Agreement.

21.5. The restriction in clause 21.4 shall not apply to information which:
(a) is already in or comes in to the public domain other than in breach of this Agreement, or
(b) is already known within the industry prior to the date of this Agreement, or
(c) is required to be disclosed by a court of law, regulatory authority or tribunal of competent jurisdiction, or
(d) is information that both parties agree in writing to disclose.

21.6. The receiving party acknowledges that any breach or violation of this Agreement is likely to cause loss or damage to the disclosing party and in that event the disclosing party shall be entitled to apply for injunctive relief or claim damages in the event of a breach, in addition to any other available remedies.

21.7. This Agreement shall remain in force until such time as the confidential information enters the public domain other than through a breach of this Agreement or this Agreement is terminated in writing by the disclosing party.

21.8. On the request of the disclosing party, the receiving party shall immediately return all documents containing confidential information which are in the possession of the receiving party including written notes, photographs, memoranda, computer files and disks, or the like which are capable of storing data and information.

22. Non-Waiver

The delay or failure of either party to enforce any right, power or remedy under this Agreement shall not be construed to be a waiver thereof or of any other right, power or remedy under this Agreement.

23. Construction

If possible these Terms and Conditions shall be read consistently with one another; however in no case may any Schedules impose any remedies or liability in excess of those set forth in these Terms and Conditions.

24. Entire Agreement

This Agreement and other Schedules attached hereto constitutes the entire Agreement and understanding between Transputec Computers Plc and The Customer and supersedes all prior oral or written proposals, discussions, representations and negotiations. This Agreement may not be changed, except by written amendment signed by authorised representatives of both parties.

25. Severability

If any portion of this Agreement is unenforceable for any reason, the remainder of the Agreement remains in full force and effect. If there is any conflict between this Agreement and its Schedules or the Service Delivery Document, the provisions of this Agreement shall prevail.

26. Successors and Assigns

All provisions of the Agreement shall be binding upon, inure to the benefit of and be enforceable by and against the respective successors and permitted assigns of Transputec Computers Plc and The Customer.

27. Governing Law

This agreement shall be governed by the laws of England and Wales, and the parties hereby agree to submit to the exclusive jurisdiction of the courts of England and Wales.

28. Notices

Notices will be in writing, and will be sent to the other party marked for the attention of the person at the address set out for such party in this Agreement. Notices may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within 24 hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail will be deemed to have been delivered 72 hours after posting and correctly directed facsimile transmissions will be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

29. Rights of Third Parties

It is the intention of the parties that no third party shall be able to assert any rights afforded to it under this agreement and the provisions of the Contract (Rights of Third Parties) Act 1999 shall not apply.

Transputec Computers Ltd, Transputec House, 19 Heather Park Drive, Wembley, London HAO 1SS | Tel: 020 8584 1400, Email: enquiries@intelefile.com

WWW.INTELEFILE.COM