Agreement for Provision of  
Prepress Services

**DATED**

(1) ELIFE SCIENCES PUBLICATIONS

**and**

(2) eXETER premedia SERVICES

**THIS AGREEMENT is dated: 11 August 2014**

**BETWEEN:**

(1) eLife Sciences Publications, Ltd (“ESPL”) a limited liability non-profit non-stock corporation incorporated in the State of Delaware, USA, with company number 5030732, and registered in the UK with company number FC030576 and branch number BR015634 at the address First Floor, 24 Hills Road, Cambridge CB2 1JP(“**Company**”) and;

(2) **EXETER PREMEDIA SERVICES PRIVATE LIMITED** a company incorporated and registered in India with company number U22219TN2004PTC054735 whose registered office is at Unit 3, Level 1, Pinnacle, Ascendas International Tech Park, Taramani CSIR Road, Taramani, Chennai 600113 (“**Vendor**”),

(each a “**party**” and together the “**parties**”).

## **BACKGROUND**

(A) The Vendor is in business on its own account for pre-press services and has certain skills and abilities which may be useful to the Company.

(B) The Vendor is an independent business willing to provide services to the Company as set out in this Agreement.

(C) the Company wishes to appoint the Vendor to provide the Services (as defined below) the terms and conditions of this Agreement.

1. Definitions and Interpretation
   1. In this Agreement the following words shall have the following meanings:

“**Account Executive**” has the meaning given to it in clause 4.1;

“**Affiliate**” means a Company which is a Subsidiary of the party concerned or which is a Holding the Company of such party or a Subsidiary of such Holding the Company where “Holding the Company” and “Subsidiary” shall have the meaning defined in s1559 of the Companies Act 2006;

“**Agreement**” shall mean this Agreement for Services comprising of the clauses and schedules hereto and the provisions of any Work Order;

“**Artwork**” means the artwork or photograph(s) (whether in hard or soft copy format) provided by the Company to the Vendor for the purposes of the Services;

“**BCDR Plan**” has the meaning given to it in clause 10.2;

“**Charges**” means the Vendor’s charges set out in Schedule 2;

“**Confidential Information**” means any information, however conveyed or presented, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and Vendors of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential;

“**Company Data”** means any data (including any Personal Data relating to the staff, customers or Vendors of the Company or its Affiliates), documents, text, drawings, diagrams, images or sounds (together with any database made up of any of those), embodied in any medium, that are supplied to the Vendor by or on behalf of the Company or its Affiliates;

“**Company Property**” means:

1. any Company Data;
2. any Resulting IPR and the Company’s Background IPR, together with any documents, materials or other items embodying the same;
3. to the extent not already covered under sub-clauses (a) and (b) above, any Confidential Information of the Company which is provided to the Vendor; and
4. any other data, software, assets, equipment or other property which is owned by the Company and which is provided to the Vendor in connection with the provision or receipt of the Services.

“**Company Requirements**” means the Company’s requirements as set out in the relevant Work Order;

“**Data Protection Requirements**” has the meaning given to it in clause 8.2;

“**Default**” **means** any default of either party in complying with its obligations under this Agreement;

“**Deliverables**” means the deliverables listed in any Work Order or otherwise produced as are result of the performance of the Services by the Supplier, including any typeset, edited, amended, translated and/or altered Manuscript or redrawn or relabelled Artwork;

“**Due Date**” has the meaning given to it in clause 6.1;

“**Industry Best Practice**” means that exercise of that degree of skill, diligence and foresight that would be expected from a skilled and experienced operator engaged in the same type of business as the Supplier;

“**Intellectual Property Rights**” means all current and future copyright, patents, trade marks or rights in databases, inventions or trade secrets, know-how, rights in designs, topographies, trade and business names, domain names, marks and devices (whether or not registered) and all other intellectual property rights and applications for any of those rights (where such applications can be made) capable of protection in any relevant country of the world;

“**Manuscript**” means the manuscript(s) provided by the Company to the Vendor for the purposes of the Services;

“**Personal Data**” has the meaning given to it under the Data Protection Act 1998

“**Personnel**” means any officer, employee or director of the Vendor or its Sub-Contractors engaged in providing the Services, including the Account Executive;

“**Security Policy**” has the meaning given to it in clause 9.1;

**“Services**” means the services to be provided by the Vendor to the Company under this Agreement from time to time (including any part of them), being such services of the nature set out in Schedule 1 and as are described in each Work Order. For the avoidance of doubt the "Services" include the production of the Deliverables;

**“Severe and Continuous Errors**” has the meaning given to it in clause 2.4;

“**Start Date**” means the date of this Agreement;

“**Term**” has the meaning given to it in clause 13.1;

“**Work Order**” means a description of the Services required by the Company to be provided by the Vendor, including any Turnaround Times and any other terms which are to apply in relation to those Services in addition to the terms of this Agreement; and

**“Working Day”** means Monday to Friday, excluding any public holidays in India. The Vendor will provide the Company with a list of all such public holidays for the year before 1st January of said year.

* 1. Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
  2. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.
  3. The schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the schedules.
  4. Words in the singular shall include the plural and vice versa.
  5. A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
  6. A reference to writing or written includes e-mail and post (unless otherwise specified).
  7. Where the words include(s), including or in particular are used in this Agreement, they are deemed to have the words without limitation following them. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.
  8. Any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
  9. References to clauses and schedules are to the clauses and schedules of this Agreement.

1. Services
   1. If the Company requests the Vendor to provide any Services to the Company under this Agreement at any time, the Company will inform the Vendor to that effect by issuing a Work Order. Such Work Order shall be in writing, which may include (at the Company’s sole discretion) by email and shall specify, amongst other things:
      1. the Services to be provided;
      2. the applicable Turnaround Times; and
      3. any special terms and conditions.
   2. The Vendor shall provide the Services set out in each Work Order:
      1. on the terms and subject to the conditions set out in this Agreement; and
      2. on and subject to any special terms and conditions set out in that Work Order,

provided that (for the avoidance of doubt) if and to the extent that any conflict or inconsistency arises between the terms and conditions referred to in clause 2.2.1, and any of the special terms and conditions referred to in clause 2.2.2, the relevant special terms and conditions will prevail to the extent of such conflict or inconsistency.

* 1. In providing the Services the Vendor undertakes, warrants and represents that:
     1. the Deliverables shall conform in all material respects with this Agreement (including any the Company’s Requirements);
     2. it shall perform the Services with all reasonable skill and care in a timely and professional manner using appropriately qualified and experienced personnel and in accordance with Industry Best Practice;
     3. it shall carry out the Services in accordance with all applicable laws, orders and regulations (including health and safety and environmental protection law and regulations);
     4. it shall ensure that prior to commencing the Services it has obtained and at all times during the Term maintain all necessary licences, permissions and consents required for it to perform the Services;
     5. it shall act in accordance with any reasonable instructions given by the Company from time to time; and
     6. it shall not act in any way which is prejudicial to the business of the Company or the Company’s Affiliates or which may reflect adversely on the integrity, goodwill or reputation of the Company or its Affiliates.
  2. If, at any time during the Term, the Vendor commits a Severe Error or a Continuous Error which are defined as follows:

|  |  |
| --- | --- |
| **Content processor** | **Severity Rating**  **(on a scale of 1-5 where**  **5 is the most serious)**  **(“Severity Rating”)** |
| Incorrect online publication resulting from  Supplier mistake(s) | 5 |
| Supply of invalid or non-standard eLife XML in final delivery | 4 |
| Introduction of error(s) at pre-editing | 4 |
| Introduction of error(s) at copy-editing | 4 |
| Introduction of error(s) at proof stage | 4 |
| Delivery of invalid or non-standard eLife XML at pre-final delivery stage | 3 |
| Delivery of content in incorrect PDF template | 3 |
| Errors in PDF templates | 2 |
| Metadata not incorporated correctly at pre-editing | 2 |

* Where at least [two] Errors with a Severity Rating of **[**5**]** occurs in any **[**3 month**] period**, after the first 4 months of the Term, this will be deemed to be a “**Severe Error**”.
* Where at least **[**five**]** Errors with a Severity Rating of **[**3**]** or above occur at any time in any **[3** month**]** period, after the first 4 months of the Term, this will be deemed to be a “**Continuous Error**”.

Then the Company will, without limiting its other rights or remedies, have one or more of the following rights:-

* + 1. to terminate this Agreement with immediate effect by giving written notice to the Supplier;
    2. to refuse to accept any subsequent performance of the Services which the Vendor attempts to make;
    3. to recover from the Vendor any costs reasonably incurred by the Company as a result of the occurrence of the Severe Error or Continuous Error;
    4. where the Company has paid in advance for any service or any part of the Services that have not been provided by the Vendor, to have such sums refunded by the Vendor; and/or
    5. to claim damages for any additional costs, loss or expenses incurred by the Company which are in any way attributable to the occurrence of the Severe Error or Continuous Error, but not for any consequential losses or loss of profits.

1. problem management
   1. The Vendor undertakes to put in place adequate and reasonable processes to record, investigate and respond to any Defaults of the Vendor reported by the Company, which, in any event, shall be no less rigorous than those employed by Industry Best Practice. The purpose of the Vendor’s investigation will be to establish the root cause of those Defaults. The Vendor’s processes shall be documented in a quality management policy that defines how the Vendor aims to reduce and ultimately eliminate non-conformance to specifications, standards, and the Company’s expectations in the most cost-effective and efficient manner. This document shall be made available to the Company within 48 hours of its request.
   2. The Vendor will use its best endeavours to remedy its Default as soon as reasonably practicable and shall carry out and/or implement all actions specified by the Company in the Remediation Notice, or otherwise, agreed between the parties to remedy the Default.
2. Personnel
   1. The Vendor shall provide the Company with a named account manager based at the operations site where the Services are carried out who will be responsible for the day-to-day management of the Company account including routine liaison with the Company staff (the “**Account Executive**”).
   2. In addition to the Account Executive, the Vendor shall supply a second, more senior contact based at the operations site (typically an operations manager or technical manager), to whom problems can be escalated at the discretion of the Company. A further level of escalation will also be specified at executive director level.
   3. The Vendor shall ensure that (i) the Personnel are adequately trained and possess the necessary skills and experience for the proper performance of the Services; and (ii) sufficient number of Personnel are employed to carry out the Services to ensure that the KPIs are met.
   4. The Vendor shall use its best endeavours to create and maintain a stable team of Personnel and to ensure the continuity of the Personnel. Where there are changes of Personnel, the Vendor will use its best endeavours to ensure that the performance of the Services is not adversely affected. The Vendor will only substitute a person performing the Services with another person of at least equal professional competence, at no extra cost and it will ensure that the Company is not charged for any time incurred by the Personnel in the performance of handover duties.
   5. The Vendor shall replace any member of the Personnel who the Company reasonably decides have failed to carry out their duties with reasonable skill and care. Following the removal of any of member of the Personnel for any reason, the Vendor shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Services.
   6. If any of the Personnel described in clauses 4.3, 4.4 and 4.5 become unavailable for any reason (including without limitation as a result of death, injury, sickness, promotion or resignation) the Vendor shall replace the relevant Personnel with individuals that the Company has approved and whose abilities and qualifications are similar to or exceed those of the replaced Personnel.
   7. The Vendor acknowledges that the Account Executive is of particular importance to the fulfilment of its obligations under this Agreement. The Vendor undertakes to use all reasonable endeavours to ensure that the Account Executive works on the Services throughout the Term and are not removed or replaced during the Term. If the Vendor wishes to remove the Account Executive, it shall first consult with the Company. If the Account Executive becomes unavailable for any reason (including without limitation as a result of death, injury, sickness, promotion or resignation) the Vendor shall replace the Account Executive with an individual that the Company has approved and whose abilities and qualifications are similar to or exceed those of the replaced Account Executive.
   8. The Vendor warrants, represents and undertakes that if any Personnel is subject to immigration control:

(i) that Personnel has valid and subsisting leave, permit or visa to enter or remain in the country where the Services are to be provided and to undertake the Services there; and

(ii) that Personnel is not subject to any conditions (in relation to such leave, permit or visa) which may affect the Vendor's obligations herein.

* 1. This Agreement constitutes a contract for the provision of services and not a contract of employment. It is a condition of this Agreement that none of the Personnel by operation of this Agreement shall become an employee of the Company nor any of the Company’s Affiliates for a period of twelve (12) months and the Vendor shall at all times indemnify the Company and keep it indemnified from and against all claims, proceedings, liabilities, damages and expenses whatsoever and howsoever arising from any such employee or personnel being deemed to be an employee of the Company or any of its Affiliates.

1. Charges
   1. In consideration of the provision of the Services by the Vendor in accordance with the terms of this Agreement, the Company shall pay the Charges applicable for each Work Order in accordance with this clause 5.
   2. The Charges shall be:
      1. inclusive of all costs and expenses of the Supplier, and any duties, imposts, levies or taxes other than VAT;
      2. fixed for the duration of the Agreement; and
      3. exclusive of VAT which will be added to the sum in question at the rate and in the manner prescribed by law.
   3. No variation in the Charges nor extra charges can be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior written consent of the Company.
2. Payment
   1. In respect of each Work Order, following the date upon which: (a) all relevant Deliverables are delivered to the Company; and (b) all relevant Services are completed, each to the reasonable satisfaction of the Company (“**Due Date**”), the Vendor shall promptly (but, in any event, no later than 60 Calendar days after the Due Date) invoice the Company for the applicable Charges (quoting the purchase order number in such invoice if provided to the Company) and the Company shall pay such invoice within 30 Calendar days of its receipt.
   2. If the Company disputes any invoice it shall notify the Vendor of the issue giving rise to the dispute and the parties shall resolve the dispute in good faith and to the Company’s reasonable satisfaction. Until such time as the dispute is resolved the Company shall be entitled to withhold payment of such invoice and time for payment of such invoice shall only commence on receipt of a corrected and valid invoice or, if no replacement invoice is required, the date of resolution of the dispute.
   3. The Company will be entitled (but not obliged) at any time or times to set off any liability of the Vendor to the Company against any liability of the Company to the Vendor (in either case however arising and whether any such liability is present or future, liquidated or unliquidated and irrespective of the currency).
3. Confidentiality and Company property
   1. Except to the extent set out in this clause 7 or where disclosure is expressly permitted elsewhere in this Agreement, each party shall:
      1. treat the other party's Confidential Information as confidential; and
      2. not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
   2. Clause 7.1 shall not apply to the extent that:
      1. such information was in the possession of the party making the disclosure, without obligation of confidentiality, prior to its disclosure; or
      2. such information was obtained from a third party without obligation of confidentiality; or
      3. such information was already in the public domain at the time of disclosure otherwise than through a breach of this Agreement; or
      4. such information was independently developed without access to the other party's Confidential Information.
      5. such disclosure is required by law.
   3. The Vendor may only disclose the Company’s Confidential Information to Personnel who are directly involved in the provision of the Services and who need to know the information. The Vendor shall ensure that such Personnel are aware of, and comply with, these confidentiality obligations.
   4. The Vendor shall not, and shall procure that the Personnel do not, use any of the Company’s Confidential Information received otherwise than for the purposes of this Agreement.
   5. The Vendor undertakes (except as may be required by law or in order to instruct professional advisers in connection with this Agreement) not to:
      1. disclose or permit disclosure of any details of this Agreement to the news media or any third party other than its Sub-Contractors.
   6. All Company Property supplied by the Company to the Vendor shall, at all times, be and remain the exclusive property of the Company (or its Affiliates or licensors, as the case may be), but shall be held by the Vendor in safe custody at its own risk and maintained and kept in good condition by the Vendor until returned to the Company. They shall not be disposed of or used other than in accordance with the Company’s written instructions or authorisation.
4. Data Protection
   1. The parties agree that the Vendor shall process any data provided to it under this Agreement on behalf of the Company as a data processor.
   2. The Vendor warrants that it will duly observe all its obligations under the Data Protection Requirements which arise in connection with this Agreement.
   3. In particular, the Vendor shall:

(i) only carry out processing on the Company’s instructions;

(ii) implement appropriate technical and organisational measures to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing;

(iii) take reasonable steps to ensure the reliability of staff who have access to Personal Data;

(iv) comply with all instructions from the Company to rectify, delete and update any Personal Data and confirm to the Company within a reasonable time that it has done so; and

(v) promptly provide such Information to the Company as the Company may reasonably require to allow it to comply with the rights of data subjects, including subject access rights.

1. Security
   1. The Vendor shall at all times employ adequate and reasonable security measures and processes to preserve the integrity of the Company Property and to prevent any loss or corruption of the Company Property, which, in any event, shall be no less rigorous than that employed by Industry Best Practice (“**Security Policy**”).
   2. The Vendor shall document its Security Policy and shall immediately provide a copy to the Company on request. The Vendor shall not vary or amend the Security Policy without the written consent of the Company (such consent not to be unreasonably withheld or delayed).
   3. Each party shall advise the other as soon as it becomes aware of any breach, or potential breach, of the Security Policy or any other breach, or potential breach, of security which may adversely affect the Services.
2. Disaster Recovery and Business Continuity
   1. The Vendor warrants that it has in place secure, off-site back-up of all data relating to the Services (including the Company Data).
   2. The Vendor will carry out an annual risk assessment of external factors that may disrupt its business. In response to the risk assessment the Vendor will promptly provide the Company with an adequate and reasonable business continuity plan, specifying how it might continue to operate in the event of disruptive events, which, in any event, shall be no less robust that that employed by Industry Best Practice (“**BCDR Plan**”). The Vendor shall make such amendments or improvements to the BCDR Plan as are reasonably requested by the Company if the Company deems it insufficiently robust.
   3. The Vendor shall not vary or amend the BCDR Plan without the written consent of the Company (such consent not to be unreasonably withheld or delayed).
   4. The Vendor shall implement the BCDR Plan in the event that the Services are not available for more than twenty four (24) hours.
3. Corporate SOCIAL Responsibility
   1. In recognition of the importance the Company attaches to corporate social responsibility, the Vendor undertakes that it shall carry out its work for the Company in such a way that will not damage the Company’s reputation as an ethical business operating in a socially responsible manner.
   2. Notwithstanding the generality of clause 11.1, the Vendor shall abide at all times by the Code of Conduct produced by the Publishers’ Resolution for Ethical International Manufacturing Standards (Prelims), as may be updated or replaced by from time to time.
4. Audit
   1. The Vendor shall maintain a complete audit trail and maintain records and supporting documentation of all financial and non-financial transactions relating to the Agreement.
   2. The Company and its internal and external auditors, inspectors, regulators and such other representatives as the Company may designate from time to time will have the right to perform audits and inspections of the Vendor and its Sub-Contractors to:

(i) verify the makeup and accuracy of all Charges and invoices;

(ii) verify the integrity of the Company’s Personal Data and examine the systems that process, store, support and transmit such Personal Data;

(iii) examine the Vendor's performance of the Services including verifying compliance with applicable KPIs and performing audits of the Vendor's practices and procedures, the Vendor's systems, the Vendor's general controls and security practices and procedures (including the Security Policy), the BCDR Plan and contingency plans and the Vendor's compliance with all applicable regulatory requirements, in particular relating to all Deliverables and Services supplied to the Company; and/or

(iv) verify the Vendor’s compliance with the Company’s corporate social responsibility requirements as stated in clause 11.

* 1. The Vendor shall (at no additional cost to the Company) give the Company and its audit representatives full access at all reasonable times and on reasonable notice to the premises at which or from which the Vendor or its Sub-Contractors supplies the Services, including those facilities where any Personnel or any of the Vendor’s equipment, software, data, records and systems relating to the Services are located.
  2. For the purposes of complying with this clause 12, the Vendor shall (and shall procure that its Sub-Contractors shall) provide full co-operation to the Company and its internal and external auditors, inspectors, regulators and representatives.
  3. The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under this clause 12 unless the audit identifies a material Default by the Vendor, in which case the Vendor shall reimburse the Company for all its reasonable costs incurred in the course of the audit.
  4. If an audit identifies:
     1. the Vendor has failed to perform its obligations under this agreement then the Vendor shall take all necessary steps to comply with its obligations at no additional cost to the Company; or
     2. the Company has overpaid any Charges, the Vendor shall pay to the Company the amount overpaid within 30 Working Days from the date of receipt of an invoice or notice to do so.

1. Term and Termination
   1. This Agreement shall commence on the Start Date and shall continue (subject to earlier termination in accordance with this Agreement) unless and until terminated by either party upon 120 Calendar days written notice to the other (“**Term**”).
   2. by giving not less than 10 Working Days’ notice if either party commits any breach of this Agreement and (if capable of remedy) fails to remedy the breach within 10 Working Days’ after being required by written notice to do so
   3. with immediate effect by giving written notice where Force Majeure Event occurs for a period exceeding 30 calendar days; or
   4. with immediate effect by giving written notice if an Insolvency Event occurs in respect of either party.
   5. The Vendor shall within 30 calendar days of termination, provide a pro-rata refund of any fees paid in advance or paid for Services which have not satisfactorily delivered or performed.
   6. Notwithstanding clause 13.2, in the event of termination, the Company shall pay for any Services satisfactorily delivered or performed up to the date of termination.
2. consequences of termination
   1. On expiry or termination of this Agreement for any reason:
      1. each party shall immediately return to each other any Confidential Information of the other party that either party may have in its possession or under its control and will, where required by a party, destroy any such Confidential Information within 14 days of being requested to do so;
      2. the Vendor shall promptly:
         1. return to the Company (or at the Company’s sole discretion and direction, destroy) all Company Property; and
         2. deliver to the Company all Deliverables that it has agreed to supply under this Agreement and which exist at the date of termination, whether or not complete, and the Vendor hereby assigns to the Company ownership of any Intellectual Property Rights in such Deliverables to the extent these have not already been assigned to the Company in accordance with clause 7.

If the Vendor fails to act in accordance with this clause 14.1.2, the Company shall be entitled to enter the premises of the Vendor to take possession of the same. Until they have been returned or repossessed, the Vendor shall be solely responsible for their safe-keeping;

* + 1. the Vendor shall assist the Company or its replacement service provider to the extent reasonably required to facilitate the smooth migration of the Services to the Company or its replacement service provider; and
    2. the Vendor shall verify in writing to the Company that it has complied with the requirements of this clause 14.1.
  1. Other than as set out in this Agreement, neither party shall have any further obligation to the other under this Agreement after its expiry or termination for any reason.
  2. Expiry or termination for any reason of this Agreement be without prejudice to, and shall not affect, the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
  3. Notwithstanding its obligations in this clause 14, if a party is required by any law, regulation, or government or regulatory body to retain any documents or materials containing the other party's Confidential Information, it shall notify the other party in writing of such retention, giving details of the documents and/or materials that it must retain.

1. liability and insurance
   1. Nothing in the Agreement excludes or limits the liability of either party in respect of:

(i) death or personal injury or property damage caused by its negligence;

(ii) any indemnity given by the Vendor in the Agreement;

(iii) its negligence or willful default;

(iv) fraudulent misrepresentation; and

(v) liability to the extent which liability may not otherwise be limited or excluded under applicable law

* 1. Subject to clause 15.1 , in no event will the Company be liable to the Vendor under or in connection with this for indirect or consequential damages arising out of or in connection with the Agreement (including its termination), whether in contract, tort (including negligence), misrepresentation, breach of statutory duty or otherwise and howsoever arising.
  2. Subject to clause 15.1 and 15.2, the liability of the Company to the Vendor arising in connection with this Agreement (including its termination), whether in contract, tort (including negligence), misrepresentation, breach of statutory duty or otherwise and howsoever arising shall in no event in each 12 month period of the Term (the first of which commences on the Start Date) exceed the total amount of the Charges paid by the Company to the Vendor during that 12 month period.
  3. The Vendor warrants that it has in effect and will maintain in effect suitable and sufficient insurance and insure and keep insured with a reputable insurance Company appropriate cover for the Services.
  4. The Vendor agrees that it shall maintain the insurance policy referred to in clause 15.4 above during the Term and until 12 months after completion of all of the Vendor's obligations under this Agreement.
  5. Upon request from the Company the Vendor will produce to the Company adequate proof of insurance cover in respect of its entire liability, which shall include copies of the Vendor's policies of insurance and the receipt for the last premium.

1. General
   1. **Anti-Corruption**: Neither the Vendor nor its Personnel will, directly or indirectly, pay, offer, promise to pay or authorize the payment of, any monies or financial or other advantage in violation of Anti-Corruption Laws and/or the Company’s Anti-Bribery Compliance Policy. Further, neither the Vendor nor its Personnel has taken or will take, directly or indirectly, any action that would cause the Company’s or the Company’s officers, directors, employees and/or affiliates to be in violation of Anti-Corruption Laws. The Vendor agrees to make all its Personnel conducting activities on behalf of the Company available for compliance training as requested by the Company, to keep full and accurate books and records of all payments made in respect of any transaction or business effected in connection with this Agreement, and to make all such books and records available to the Company’s duly authorized representatives as deemed necessary by the Company to verify the Vendor's compliance with Anti-Corruption Laws and this Agreement. The Company may terminate this Agreement immediately upon written notice to the Vendor where the Company determines in good faith that the Vendor has breached this provision, and the Vendor shall indemnify the Company from any claims, suits, investigations, penalties and fines of any kind arising from any breach of this provision. This provision shall survive any termination of the Agreement. For the purpose of this clause 16.1, “**Anti-Corruption Laws**" means any applicable foreign or domestic anti-bribery and anti-corruption laws and regulations, as amended from time to time, including the UK Bribery Act 2010, the US Foreign Corrupt Practices Act 1977 and any laws intended to implement the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
   2. **Force Majeure**: Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under this Agreement if and to the extent such delay or failure is caused by a Force Majeure Event which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable and, in the case of the Vendor, provided that the Vendor has acted in accordance with the BCDR Plan. If a Force Majeure Event prevents the Vendor from providing any of the Services for more than 15 days, the Company shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Vendor. For the purpose of this clause 16.2, “**Force Majeure Event**” shall mean any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Vendor, the Personnel or any other failure in the Vendor’s supply chain
   3. **Assignment**:
      1. The Vendor shall not assign, transfer, charge or deal in any other manner with all or any of its rights or obligations under this Agreement without the prior written consent of the Company.
      2. The Company may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under this Agreement and may subcontract or delegate in any manner any or all of its obligations under this Agreement to any third party or agent.
   4. **Notices**: 
      1. Any notice or other communication required to be given to a party under or in connection with this Agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a Company) or (in any other case) its principal place of business.
      2. Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
   5. **Severance**: 
      1. If a court or any other competent authority finds that any provision (or part of any provision) of this Agreement is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of this Agreement shall not be affected.
      2. If any invalid, unenforceable or illegal provision of this Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
   6. **No partnership**: Nothing in this Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.
   7. **Non-solicitation**: During the course of the Agreement and for a period of 6 months after its termination, the Vendor shall not solicit or entice away from the Company (and other than by way of general advertising) any employee who at any time prior to such solicitation or enticement was employed in connection with the performance of this Agreement.
   8. **Publicity**: The Vendor shall not make any public disclosures relating to this Agreement or the subject matter of this Agreement without the written agreement of the Company, except for any announcement intended solely for internal distribution or any disclosure required by legal, accounting or regulatory requirements. For the avoidance of doubt, the Vendor shall not use the Company’s name or any of its Affiliates names in any advertising, promotion, endorsement, testimonials or other forms of publicity or promotional material without the prior written permission of the Company.
   9. **Third parties**: A person who is not a party to this Agreement shall not have any rights under or in connection with it.
   10. **Variation**: Any variation, including any additional terms and conditions, to this Agreement shall only be binding when agreed in writing and signed by the Company.
   11. **Entire Agreement**: The Agreement constitutes the entire agreement and understanding between the parties relating to the subject matter. Each of the parties acknowledges and agrees that in entering into the Agreement it does not rely on any prior statement, representation, warranty or understanding, save to the extent that such statement, representation, warranty or understanding is incorporated into the Agreement. Each of the parties acknowledge and agree that in entering into the Agreement it has not relied on or has been induced to enter into the Agreement by any prior statements, representations, warranties or understandings.
   12. **Governing law and jurisdiction**: This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

This Agreement has been entered into on the date stated at the beginning of it.

**Schedule 1: Prepress Service Requirements**

**Ingest content delivered via FTP from the journal submission system (including XML metadata, Word/LaTex author file, all supplementary files including figures, source code, source data etc).**

**Ingest Decision letter/responses and Digests via email delivery from eLife staff.**

**Using Kriya (ExeterPremedia’s proprietary tool) process the article and all associated assets through the production process and make available to eLife staff and authors so they can edit and amend the content before publication.**

**Pre-edit all articles so they conform to eLife style and all assets and file outputs are named according to requirements.**

**Copy edit the proportion of articles that are designated level 2 copy editing.**

**Deliver authors a “deep link” to an html view of their article (using Kriya), which allows them the ability to change metadata, edit content, upload new figures/associated files, and also allows them to manipulate the display of tables/video still/figures on their PDF representation of the article.**

**Deliver eLife approved XML at any point in the process following pre-editing.**

**Required turnaround times, where the process requires manual intervention or QC by the vendor:**

|  |  |
| --- | --- |
| **Task** | **Time** |
| Pre-editing/file preparation | 24 hr |
| Copy editing | 48 hr |
| Generation of author “proof” | 12 hr |
| Author correction processing | 6 hr |
| Revision cycles | 12 hr |
| Delivery of final package of content | 6 hr |

**NOTE: the Vendor facility working hours are:** 3:30 AM UK Time to 3:30 PM UK Time Monday to Friday. Hours outside these timeframes will not be included in turnaround times.

**Within 3 months of the start date of the contract it is expected that 90% of the articles processed will not require manual input by the vendor at the following stages, and therefore the turnaround time will be <30 minutes:**

Generation of author “proof”

Author correction processing

Delivery of final package of content

**Within 3 months of the start date of the contract it is expected that 95% of the articles processed will not require revision cycles after the author review.**

**Within 3 months of the start date of the contract it is expected that the pre-editing turnaround time will reduce to 12 hours, with a proportion of articles being processed within 2 hours.**

**Volume of content**

**With the exception of copy editing requirements, all services provided by the vendor are scalable and should not be affected by increased volumes of content delivery.**

**Copy editing: Capacity to copy edit within agreed turnaround time 55% of volume of research articles, to a maximum of 100 articles a month.**

**Capacity to copy edit within agreed turnaround time to a maximum export of 8 articles in one day.**

**No KPIs have been agreed but may be introduced later by mutual agreement.**

**Schedule 2: Charges and Invoicing Instructions**

## **Key terms and conditions that would apply to a project of this nature**

### **Payment terms:**

* The amount quoted in cost estimates is net of any taxes for Exeter Premedia Services.
* Any charges associated of transfer of payment will be to the account of eLife Sciences Publications.
* The payment due date is 30 days from the date of invoice.

|  |  |  |
| --- | --- | --- |
| **Process** | **Measure** | **Cost** |
| Standard workflow processing (including pre-editing, graphics sizing and renaming; XML creation; typesetting (standard PDF and figures PDF; Author proofing, correction cycle, output delivery) | Per 1000 words | £2.70 |
| Copy editing level 2 | Per 1000 words | £2.50 |
| Produce figures for lens | Per month | £50 |

**Charges per article can be raised after delivery in final format to the production AWS bucket/HighWire Express.**

**Invoices will be raised on the last day of each calendar month, up to and including that date.** SIGNED by Mark Patterson )  
duly authorised to sign for )  
and on behalf of )  
 eLife Sciences Publications, Ltd)

SIGNED by Krishnamurthi Venkataramani )  
duly authorised to sign for )  
and on behalf of )  
**Exeter Premedia Services Private Limited** )