## MATERIAL TRANSFER AGREEMENT

## Type in the name of the RELATED RESEARCH

**MATERIALS & DE-IDENTIFIED DATA**

This Material Transfer Agreement (“Agreement”) effective the \_\_\_\_\_ day of \_\_\_\_\_, 2024, is entered into by and between **Scripps Health** a California nonprofit, public benefit corporation with its principal address at 10140 Campus Point Court, San Diego, CA 92121 (“Scripps”), and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Recipient”) to arrange the sharing of materials in furtherance of XXXXXXXX related research.

RECITALS

A. Recipient is a [insert information about recipient] who is undertaking research in developing [describe what the recipient is doing relating to the above-mentioned research].

B. Given the extraordinary importance of Recipients activities, Scripps will provide the Materials in support of Recipient’s efforts.

C. Recipient shall pay Scripps for the Materials as described in the Invoice attached as Exhibit A and incorporated herein by this reference.

D. The parties may elect to append this Agreement in writing and signed by both Parties, setting forth additional research activities related to the Materials.

NOW, THEREFORE, the parties agree as follows:

1. Materials & De-Identified Data. “Materials” covered by this Agreement are defined as de-identified biological samples & de-identified data to be provided by Scripps (either directly or through an affiliated pathology service provider). The Materials are considered proprietary to Scripps. Individual transfers of Materials will be logged in a **Material Transfer Log** or otherwise documented by the parties.

2. Site of Use. The site at which the Materials research may be conducted is in Recipient’s facility. Recipient shall not distribute or release the Materials to any person other than laboratory personnel under the Recipient’s direct supervision. The Recipient shall ensure that no one will be allowed to take or send these Materials to any location other than Recipient’s facility.

3. Permitted Uses. Recipient agrees:

(a) To use the Material solely for XXXXXX related activities, which are described as follows:

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| Insert detailed description of how the materials are to be used |
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(b) Not to use the Material in human subjects;

(c) To ensure the Materials are used, stored, disposed of and transported in compliance with all applicable statutes and regulations, including Public Health Service and National Institutes of Health regulations and guidelines such as, for example, those relating to research involving the use of animals or recombinant DNA;

(d) Not to undertake any activity to identify any individual that was the source of the Materials;

(e) Obtain all appropriate approvals from any regulatory agency required in connection with the activities contemplated herein.

4. Proprietary Rights; Intellectual Property. Scripps retains the right to use any Materials that it retains in its sole discretion and retains all rights relating to any intellectual property it, or others, developed from the use of any retained Materials or developed prior to the transfer of the Materials to Recipient. Scripps retains no intellectual property interest in the Materials except as immediately set forth above.

5. Compliance with Law. Recipient shall perform all activities contemplated by this Agreement in compliance with all applicable laws and regulations, including but not limited to those of the NIH, FDA, DHHS, and the Code of Federal Regulations, for the protection of human subjects (45 CFR 46.102).

6. No Warranty. Recipient acknowledges that any Material delivered pursuant to this Agreement is understood to be experimental and may have hazardous properties. SCRIPPS MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESSED OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE MATERIAL WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER PROPRIETARY RIGHTS.

7. Indemnification. Except to the extent prohibited by law or when caused by the willful misconduct of the Scripps, the Recipient assumes all liability for damages that may arise from its use, storage, or disposal of the Material. Recipient agrees to defend, indemnify, and hold harmless Scripps and its affiliates and subsidiaries and their respective trustees, officers, employees, physicians, and agents from any loss, claim, injury, damage, expense or liability (including attorney's fees), of whatsoever kind or nature, which may arise from or in connection with Recipient’s acts under this Agreement, including but not limited to Recipient’s use, handling, storage, or disposal of the Materials.

8. Assignment. This Agreement is not assignable, whether by operation of law or otherwise, without the prior written consent of Scripps.

9. Termination. This Agreement will terminate on the earliest of the following dates: (a) when the Material becomes generally available from third parties, for example, though reagent catalogs or public depositories or (b) on thirty (30) days written notice by either party to the other, or (c) at any time by Scripps if Recipient breaches any of the terms, covenants or conditions of this Agreement or if Scripps determines, in its sole discretion, that there is an imminent health risk or patent infringement.

9.1 If termination should occur under 10(c) above, the Recipient will discontinue its use of the Material and will return or destroy any remaining Material in its possession.

9.2 In the event Scripps terminates this Agreement under 10(b), Scripps will defer the effective date of termination for a period of up to one year, upon request from the Recipient, to permit completion of research in progress. Upon the effective date of termination, or if requested, the deferred effective date of termination, Recipient will discontinue its use of the Material and will return or destroy any remaining Material in its possession.

9.3 If the Material is destroyed or disposed of by Recipient, Recipient shall provide Scripps with written notice of such destruction.

10. Identifiable Materials. Recipient acknowledges that to the extent Scripps may be a “Covered Entity” or “Business Associate” acting on behalf of a Covered Entity, as that term is defined by the Health Insurance Portability and Accountability Act of 1996 (codified at 42 U.S.C. 1320d-1329d-8; 42 U.S.C. 1320d-2) (“HIPAA”) and regulations promulgated thereunder codified at 45 CFR Parts 160, 162 and 164 *et seq.* (“HIPAA Regulations”):

10.1 Scripps shall use commercially reasonable efforts to de-identify any Material to be provided to Recipient under this Agreement in accordance with HIPAA Regulations.

10.2 To the extent that any Material is accompanied by or associated with individually identifiable health information as defined by HIPAA and HIPAA Regulations (including 45 C.F.R. §160.103), the Recipient agrees to: (a) execute whatever agreements are necessary for the use and/or disclosure of such individually identifiable Material, including a Data Use Agreement, in a form consistent with 45 C.F.R. §164.514(e)(4) that shall be attached hereto and incorporated herein; or (b) to use and/or disclose such individually identifiable Material consistent with individual Authorization(s) obtained in accordance with HIPAA Regulations.

11. Relationship between the Parties. None of the provisions of this Agreement is intended to create, nor shall be deemed or construed to create, any relationship between the parties other than that of independent parties contracting with each other to affect the provisions of this Agreement. The parties are not and shall not be construed to be in a relationship of a joint venture, partnership or employer-employee. Neither party shall have the authority to make any statements, representations or commitments of any kind on behalf of the other party, or to use the name or the other party in any publications or advertisements, except with the written consent of the other party or as is explicitly provided for herein.

12. Governing Law. This Agreement and the rights and obligations of the parties hereunder shall in all respects be governed and construed by the laws of the State of California and any legal proceeding relating to this Agreement shall take place in San Diego County, California.

13. Amendment. This Agreement may be amended, supplemented, or modified only by a written instrument executed by the parties. No waiver of any provision of this Agreement shall be binding unless executed in writing by the parties.

14. Severability. Should any provision of this Agreement or application thereof be held unenforceable or invalid, the remainder of this Agreement shall not be affected and shall continue to be valid and enforceable to the fullest extent permitted by law unless to do so would defeat the purpose of this Agreement.

15. Notice. Any notices, approvals, specifications, requests, consents, or demands required, permitted, or desired to be given hereunder shall be in writing and shall be considered effective as of the date of either (a) in hand delivery; (b) mailed by prepaid registered or certified mail, return receipt requested, or (c) sent by a nationally recognized overnight courier service addressed as specified by the parties above.

16. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Scripps to comply with applicable federal regulations.

17. Incorporation of Recitals. The recitals contained on the first page of this Agreement are made part of this Agreement by this reference.

18. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be an original and all such counterparts together shall constitute the entire agreement. Electronically executed and electronically transmitted signatures shall have the full force and effect of an original signature.

SIGNATURE PAGE TO FOLLOW

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the date written below by their duly authorized representatives.

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| “Scripps” |  | “Recipient” |
| Scripps Health  Initials: \_\_\_\_\_\_\_  Printed Name: Adelaide Fortmann, PhD  Title: Chief Research Officer  Scripps Health |  | [Company Name] |
|  |  |  |
| Initials: \_\_\_\_\_\_\_ |  | Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
|  |  |  |
| Printed Name: Melody Stewart |  | Printed Name: |
|  |  |  |
| Title: Vice President/Chief Operating Executive· Scripps Health |  | Title: |

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| Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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| Printed Name: Bradley Ellis |
|  |
| Title: Chief Legal Officer,  Scripps Health |

**Exhibit A**

**Invoice**

[insert preferred form of invoice]