**MATERIAL TRANSFER AGREEMENT**

This Materials Transfer Agreement (“MTA”) is made on the XX day of XXXX, 2024 (“Effective Date”), between

**The Aga Khan University-Kenya**, a duly registered private university under the Laws of Kenya, with a head office at University of Centre, 3rd Parklands Avenue, Off Limuru Road, P.O. Box 30270-00100, Nairobi, Kenya (‘’Provider’’)

And

(ACADEMIC COLLABORATOR NAME)\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_of address \_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(“ Recipient”).

(The Provider and the Recipient hereinafter collectively known as the ‘’Parties’’).

**WHEREAS,**

1. Provider and Recipient are party to a grant agreement (“Grant Agreement”) dated XXXXX , to enable the analysis of samples for part of the research project titled *“XXXX”*;
2. In connection with the Grant Agreement, Provider will provide Recipient with certain materials;
3. In order to provide the materials to Recipient, Provider requires a MTA to be signed by the Parties.
4. Recipient and Provider now wish to enter into this MTA solely to outline the responsibilities related to the transfer and usage of the materials

**NOW THEREFORE**, the Parties agree as follows:

1. Description of Material.

The Provider will provide the Recipient with (describe the Materials). The Provider agrees to properly label, package and transport the Materials at the Recipient’s costs in accordance with the applicable laws and regulations. The human tissues to be covered under this MTA are: (insert as required) extracted from study participants who have given informed consent.

2. Collection of the Biological Materials.

The Materials will be collected from the study participants who have given informed consent under and in accordance with Provider approved study protocol titled, *“xxxxx.”*

3. Permitted Use.

* 1. All tests conducted on the above Materials will be for study purposes as outlined in the IRB approved study protocol above.
	2. This MTA and the resulting transfer of Materials constitute a non-exclusive license to Recipient to use the Materials for the sole purpose of the research as described in the Grant Agreement and the IRB approved study protocol which accompanies the Implementing Letter (“Research”). The Material may be used by the Recipient in other projects or shared with other researchers with approval by the Research and Ethics Committee at Aga Khan University-Kenya, National Council on Science, Technology, and Innovation (NACOSTI) or other relevant ethics review committee.

* 1. No new experiment/analysis apart from the study shall be performed by Recipient without the prior consent of the Provider. The Local PI has the right to retain the part or copy of the Material’s sample in the Provider’s repository for reference and further research.
	2. The Recipient agrees that it shall follow all applicable local laws and regulations, and all relevant laboratory guidelines in the transfer of the Material and any associated data in relation to the Material.
	3. The Material will be de-identified before being sent to Recipient.

4. Location.

The Materials provided to Recipient will be tested and analyzed by or on behalf of Recipient. Any remaining Materials that are collected by Provider from the study participants, which are not transferred to Recipient, will be stored by Provider at the Aga Khan University-Kenya Laboratory in Nairobi, Kenya.

5. Implementing Letter.

Pursuant to this MTA, a study specific implementing letter will be generated for each transfer (“Implementing letter”), setting forth in detail a description including the size and quantities of the Materials to be shipped, schedule number and frequency of shipments and effective term of the Implementing letter, the form of which is set forth herein as Exhibit A and fully incorporated herein.

6. Use of Results

* 1. It is understood that the results provided by Recipient to Provider from the use of the Materials in the Research (“Results”) are of a research nature only and are not intended as a guide to patient management.
	2. Recipient assures that its use of Materials will be in compliance with all applicable environmental, health and safety laws and other applicable local and international regulations with respect to its use.
	3. The Recipient shall not use the Material in any manner that would violate the study participants’ consents obtained for the study. Provider represents and warrants that the use of the Materials for the Research is consistent with the study participants’ consents.
	4. The Recipient will restrict access to the Material to only those individuals involved in the Recipient’s research who have a need to access Material to carry out their duties, and any such access will be consistent with the assurances and obligations set forth in this MTA.

7. Publications.

Any publication or other proposed disclosure in relation to the Results shall be a collaborative effort between the Parties and prior to publication each Party shall consult with the other and mutually agree in good faith and in the interests of scientific advancement the form and content of the publication or other disclosure. The Provider agrees and confirms that the Recipient will be given appropriate acknowledgment and due credit of their contribution in the completion of the Study and the Recipient agrees that the Provider shall be acknowledged as the source of the Material and given credit in accordance with academic custom.

8.Intellectual Property

* 1. All intellectual property rights of either Party in existence prior to the Effective Date (“Background IP”) shall remain with the Party owning such rights and agrees to allow worldwide, revocable, fully-paid, royalty-free access to and use of its Background IP by the other for purposes of implementing the Project only. Any patents, inventions, copyrights, database rights, design rights (whether registered or not and all applications for any of the foregoing), whensoever and howsoever arising and all other similar forms of intellectual property, subsisting now or at any time in the future, that solely and directly relate to the Material (“Material IP”) and any documentation or instructions provided hereunder by the Provider shall remain vested in Provider.
	2. All other patents, inventions, copyrights, database rights, design rights (excluding Results) and any intellectual property rights that may subsist in them generated by Recipient or Provider as a result of its work under the Study (“Other IP”) shall be owned in accordance with the intellectual property policy of the Party with whom the inventors or creators of such works are affiliated.
	3. In the event that the Parties are jointly responsible for generating Project Intellectual Property (“Joint IP”), this will vest jointly and equally as joint owners. Each joint owner will have an automatic, non-exclusive, royalty-free license, in and to the Joint IP, during and after the Project .
	4. In the event of filing Intellectual Property applications for protection of Joint IP, filing, prosecution and maintenance costs will be borne by the joint owners in equal proportion or as otherwise agreed or to be agreed between the joint owners. All Parties will act reasonably in relation to determining the need for and nature and terms of any Intellectual Property rights applications. The joint owners will discuss in good faith and make all reasonable endeavour to reach agreement in relation thereto.
	5. If a joint owner does not wish to seek protection of the Joint IP, the Party wishing to file for protection may bear the costs associated with filing the application and will be entitled to exclusive ownership of such Joint IP from that Party who did not wish to protect such Joint IP. Joint owners agree to grant each other on fair and reasonable conditions, the right of exploitation to the Joint IP. Inventorship shall be determined in accordance with the Kenyan Industrial Properties Act. Where there is a conflict in provisions, the intellectual property laws of the Provider take precedence.
	6. Recipient will promptly and fully disclose in writing to Provider any and all developments, inventions and know-how (whether or not protectable under state, federal, or foreign intellectual property laws) directly related to the Material or its use, or developed using the Material, which are conceived and/or reduced to practice by Recipient, alone or jointly with others, in the performance of the Research Program (the “Inventions”).

9.Indemnification for Use and Storage under Material Transfer.

No indemnification for any loss, expense, claim, damage, demand, suit, liability or other actions intended or provided by either Party for the use, disposal, handling or storage of the Materials transferred under this MTA and each Implementing Letter, except to the extent permitted by law when such loss, expense, claim, damage, demand, suit or liability results from the gross negligence or willful misconduct of the other Party, its officers, agents or employees. Each Party shall be responsible for any loss, expense, claim, damage, demand, suit or liability that said Party incurs from its own use or storage of the Materials transferred under this MTA and each Implementing Letter.

10.No Warranty.

The MATERIALS are being provided by the PROVIDER “AS IS” WITHOUT ANY WARRANTIES, EXPRESSED OR IMPLIED, and INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. In particular, the Provider does not represent or warrant that the use of the Material will not infringe or violate any patent or proprietary rights of third parties.

The RESULTS are being provided by the RECIPIENT “AS IS” WITHOUT ANY WARRANTIES, EXPRESSED OR IMPLIED, and INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11.Data protection

In performance of this MTA, the Parties shall maintain information in strict confidence and ensure that such information is processed in accordance with the provisions of applicable privacy laws, and shall not disclose such information to any third party, or in any publication, unless required by applicable law. Collection and sharing of Materials shall be in accordance with this MTA and all applicable data protection obligations and requirements under applicable privacy laws of the country or countries in which the Parties are registered, operate, or perform under this MTA including the Data Protection Act, 2019 and its Regulations, Laws of Kenya. The Parties will take all reasonably necessary steps to provide for the safe custody of any and all confidential information in its possession and to prevent unauthorized access thereto or use thereof in compliance with applicable privacy laws.

12.Confidentiality

Both Parties agree to maintain or cause to be maintained in confidence all information received from the other under this MTA (collectively “Confidential Information”) that is marked as “Confidential” or if unmarked, would be of a nature that a reasonable person would determine the information to be confidential. Notwithstanding the foregoing, the obligation of non-disclosure shall not apply to the following:

1. Information that is or becomes publicly available through no breach of this Agreement by Recipient;
2. Information that is already independently known to Recipient, as shown by its prior written records;
3. Information that is disclosed to Recipient on a non-confidential basis by a third party with the apparent legal right to do so or who is not otherwise known to be bound by confidentiality obligations.

Recipient shall be permitted to disclose Confidential Information in connection with a requirement of applicable law or order of a court of competent jurisdiction, provided that Recipient shall, to the extent legally permissible, first notify Provider and reasonably cooperate, at Provider’s sole expense, in Provider’s efforts to restrict or limit the scope of such disclosure.

13.Amendment

This MTA may only be modified or amended in a writing signed by the authorized representatives of both Parties.

14. Partnership

The Parties are independent contractors. Nothing in this MTA is intended to, or shall be deemed to, establish any partnership agency of joint venture between any of the Parties, nor shall it authorize any Party to make or enter any commitments for or on behalf of any other Party except as expressly provided.

15.Conflicts.

Should there be a conflict between by the Grant Agreement and the MTA, the terms of the Grant Agreement will govern. The terms of this MTA and the terms of the Grant Agreement are intended to be supplementary and are not intended to contradict each other, however, in the event of any contradiction, the terms of the Grant Agreement shall prevail.

16.Assignment

Neither Party may, without the prior written consent of the other, assign or transfer, delegate or subcontract all or any of its rights or obligations under this MTA to any third party.

17. Waiver

No failure or delay by either Party in exercising any right, power or privilege under this MTA shall operate as a waiver of that right, power or privilege and no single or partial exercise by any party of any right, power, remedy or privilege shall preclude any further exercise of that right, power, remedy or privilege.

18. Force Majeure

* 1. Under no circumstance shall the Parties be liable to each other for any delay, failure or breach of condition or warranty under this MTA directly due to any event or condition of “Force Majeure” event (as defined hereunder), not existing as of the date of signature of this MTA and not reasonably foreseeable, not reasonably within the control of the Parties as of such date, which might prevent in whole or in material part the performance of its obligations herein.
	2. Without limiting the foregoing, the following shall constitute events or conditions of Force Majeure: acts of state or governmental action, terrorism, riots, disturbances, war, strikes, lockouts, slowdowns, prolonged shortage of energy or other basic supplies, epidemics, fire, flood, hurricane, typhoon, earthquake, lightning and explosion or any other cause beyond the reasonable control of the Party affected (“Force Majeure”).
	3. In such circumstances the affected Party shall be entitled to a reasonable extension of time for performing such obligations. If the period of delay or non-performance continues for thirty (30) days, the Party not affected may immediately terminate this MTA by giving written notice to the affected Party.

19.Validity and Enforceability

* 1. If any provision of this MTA is or becomes for any reason whatsoever invalid, illegal or unenforceable, it shall be divisible from this MTA and shall be deemed to be deleted from it and the validity of the remaining provisions shall not be affected in any way.
	2. If one Party gives notice to the other of the possibility that any provision or part-provision of this MTA is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision and original intention of the Parties.

20. Dispute Resolution

* 1. Where a dispute arises, the Parties shall initially work at resolving this amicably within thirty (30) days through their senior executives.
	2. Should the matter remain unresolved after the thirty (30) days, the Parties may resort to arbitration by a single arbitrator who shall be mutually agreed between the Parties or in default of such agreement within 14 days of the notification of a dispute, upon the application of either Party, by the Chairman for the time being of the Kenya Branch of the Chartered Institute of Arbitrators of the United Kingdom.
	3. Such arbitration shall be conducted in Nairobi in accordance with the rules of Arbitration of the said Institute and subject to and in accordance with the provisions of the Arbitration Act No.4 of 1995.To the extent permissible by law, the determination of the Arbitrator shall be final and binding upon the Parties.
	4. Either Party to the Agreement who encounters concerns which fail to be resolved through arbitration or whose circumstances change in such a manner that it would be impossible to continue with the Agreement, shall give the other party a two (2) month notice of intent to terminate the Agreement.
	5. In the event of a dispute or claim brought by a data subject or the authority concerning the processing of data against either or both of the Parties, the Parties will inform each other about any such disputes of claims and will cooperate with a view to settling them amicably in a timely fashion.

21. Termination

1. This MTA may be terminated by either Party with or without cause by a Party giving the other one (1) month’s written notice.
2. This MTA may terminate with immediate effect upon the occurrence of any of the following events or conditions:
3. The Parties terminate this MTA by mutual consent to be confirmed in writing and signed by the Parties;
4. If a Party commits a material breach of any term of this MTA which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
5. If a Party repeatedly breaches any of the terms of this MTA in such a manner as to reasonably justify the other Party’s opinion that such first party’s conduct is inconsistent with the first Party having the intention or ability to give effect to the terms of this MTA which may be considered a material breach;
6. A Party (i) petitions for bankruptcy or reorganisation under bankruptcy laws or (ii) experiences a significant change in its financial or operational capabilities which in the reasonable opinion of the other Party seriously affects the Party’s ability to perform the responsibilities under this MTA;
7. In the event that the Recipient is in breach of its obligations under these clauses, the Provider may temporarily suspend the transfer of Materials to the Recipient until the breach is repaired or this MTA is terminated.
8. The Parties agree that the termination of these clauses at any time, in any circumstances and for whatever reason does not exempt them from the obligations and/or conditions under the clauses as regards the processing of the Materials transferred.
9. In the case of any termination or end of term, the Recipient shall discontinue all use of the Material and, at Provider’s discretion, promptly return to Provider or destroy all unused Material in accordance with Provider’s instructions.
10. On termination of this MTA, the Recipient will provide in confidence to the Provider copies of all documents, information, inventions, modifications, derivatives, improvements or discoveries obtained under the Intended Use and in relation to any Invention. Immediately upon termination of this Agreement for any reason whatsoever, the Recipient shall discontinue its use of the Material and shall at Provider’s written request, at Recipient’s own cost and expense, promptly return to Provider, delete or destroy all unused Material and Confidential Information in accordance with Provider’s instructions.

22. Governing Law.

This MTA shall be governed by and construed in accordance with the Laws of Kenya.

23.Entire Agreement

* 1. The Parties acknowledge that this MTA constitutes the entire understanding between Parties and that it has not been induced to enter into the MTA in reliance on, nor has it been given, any representation, warranty or other statement of any nature whatsoever other than those set out in this MTA.
	2. This MTA may be signed in counterparts, and each counterpart may be delivered by facsimile or signed PDF by email. Each counterpart shall constitute an original, and when taken together, shall constitute one and the same instrument.

**IN WITNESS WHEREOF**, the Parties have signed and subscribed to this MTA through their authorized representatives. The signatories below upon signatures also confirm that they are the legal, authorized signatories to sign on behalf of their respective institutions for this MTA.

For **THE AGA KHAN UNIVERSITY-KENYA**

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**Name:**

Title:

Date:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Name:**

Title:

Date:

Read and Understood:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Name:**

Title: Principal Investigator

Date:

For **(INSERT COLLABORATOR’S NAME)**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Name:**

Title

Date:

Read and Understood:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Name:**

Title: Principal Investigator

Date:

**Exhibit A**