

OPERATING AND FUNDING AGREEMENT
BETWEEN
SCRIPPS FLORIDA FUNDING CORPORATION
and
THE SCRIPPS RESEARCH INSTITUTE

Dated January 30, 2004

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE 1 – DEFINITIONS	1
ARTICLE 2 – ESTABLISHMENT OF SCRIPPS FLORIDA.....	5
2.1 Establishment of Scripps Florida; Purpose	5
2.2 Name	6
2.3 Principal Executive Office.....	6
2.4 Term.....	6
2.5 Scripps’ Tax-Exempt Status; Funding to Use Best Efforts to Obtain Tax-Exempt Status as 501(c)(3) Organization	6
2.6 Scripps’ Federal Funding.....	6
ARTICLE 3 – GRANT OF APPROPRIATED FUNDS	6
3.1 Terms of Grant.....	6
3.2 Use of Grant Funds	6
3.3 Prohibition on Use of Grant Funds for Lobbying.....	7
3.4 Ownership of Discoveries, Inventions and Other Technology	7
3.5 Publications.....	7
3.6 Other Funding Sources	7
ARTICLE 4 – TIMING AND CONDITIONS OF GRANTS	7
4.1 Grant	7
4.2 Timing of Disbursement of Grant Funds.....	7
4.3 Request for Grant Funds	8
4.4 Conditions to Funding.....	8
4.5 Failure to Comply with Grant Request	9
ARTICLE 5 – SECURITY FOR REINVESTMENT.....	10
ARTICLE 6 – REPRESENTATIONS AND WARRANTIES OF SCRIPPS	10
ARTICLE 7 – REPRESENTATIONS AND WARRANTIES OF FUNDING	15
ARTICLE 8 – BOARD OF TRUSTEES; COMMITTEES; MEETINGS OF TRUSTEES	16
8.1 Board of Trustees and Committees.....	16
8.2 Board of Trustees Meetings	16
8.3 Business Plan	17
8.4 Budget Approval.....	17

TABLE OF CONTENTS Cont'd

	<u>Page</u>
ARTICLE 9 – COVENANTS OF SCRIPPS	18
9.1 Treatment of Scripps Florida as a Separate Segment for	
9.2 Financial Information	18
9.3 Annual Report.....	19
9.4 Annual Audited Financial Statements and Report.....	20
9.5 Performance Expectations	20
9.6 Scripps to Use Reasonable Best Efforts.....	21
9.7 Tax Status and Returns	21
9.8 Scripps' Cooperation in Recruiting For Profit and Not-For-Profit Biotechnology and Pharmaceutical Companies.....	21
9.9 Scripps to Proceed Diligently to Implement its Business Plan.....	21
9.10 Employment Issues	21
9.11 Vendors	19
9.12 Job Creation and Equipment Purchases.....	22
9.13 Insurance	22
9.14 Other Reports.....	22
9.15 Compliance Assessment	22
9.16 Compliance with Applicable Laws.....	23
9.17 Scripps Not to Pledge Royalty Revenues	23
9.18 Relocation of Materials and Supplies	23
9.19 Education and Internships.....	23
 ARTICLE 10 – REINVESTMENT OF GRANT FUNDS	 23
10.1 Reinvestment of Grant Funds	23
10.2 Computation of Amount of Reinvestment Funds	24
10.3 Timing of Reinvestment Payments.....	24
10.4 Survival of Certain Rights	24
 ARTICLE 11 – EXCLUSIVE FACILITY; OUTSIDE ACTIVITIES	 25
11.1 Limitation on Additional Research Facilities	25
11.2 Certain Acknowledgments.....	25
11.3 Modification of Covenant.....	25
11.4 Remedies for Violation.....	26
 ARTICLE 12 – INSPECTION OF SCRIPPS' RECORDS	 27
12.1 Records to be Kept.....	27
12.2 Inspection of Scripps' Records	27
12.3 Funding's Covenants Regarding Confidential and/or Proprietary Records of Scripps	28
 ARTICLE 13 – DEFAULTS AND REMEDIES.....	 28
13.1 Events of Default	28

TABLE OF CONTENTS Cont'd

	<u>Page</u>
13.2 Material Default	29
13.3 Remedies	29
13.4 No Waiver	30
ARTICLE 14 – CLAIMS BY THIRD PARTIES	30
14.1 Claims by Third Parties Against Funding	30
14.2 Procedure for Defense of Claims by Third Parties	30
ARTICLE 15 – MISCELLANEOUS	31
15.1 Notices	31
15.2 Survival; Rights Not Affected by Knowledge	32
15.3 No Implied Waiver	32
15.4 Partial Invalidity	33
15.5 Binding Effect	33
15.6 Modifications	33
15.7 Governing Law	33
15.8 No Assignment	33
15.9 Counterparts	33
15.10 No Partnership	33
15.11 Arbitration	33
15.12 Entire Agreement	34
15.13 Third Parties	34
15.14 Titles and Subtitles; Form of Pronouns; Construction and Definitions	34
15.15 Costs	34
15.16 Force Majeure	35

OPERATING AND FUNDING AGREEMENT

THIS OPERATING AND FUNDING AGREEMENT is made and entered into as of the 30th day of January, 2004, and is effective as of the Effective Date, by and between SCRIPPS FLORIDA FUNDING CORPORATION, a Florida not-for-profit corporation (“Funding”), and THE SCRIPPS RESEARCH INSTITUTE, a California nonprofit public benefit corporation (“Scripps”).

WITNESSETH

WHEREAS, the Florida legislature has enacted the Enabling Statute and the Public Records Statute to, among other things, create Funding, appropriate the sum of \$310 million, and facilitate the establishment and operation of a biomedical research institution in Florida for the purposes of enhancing education and research and promoting economic development and diversity;

WHEREAS, Scripps is one of the country's largest, private, non-profit research organizations and has become internationally recognized for its basic research into immunology, molecular and cellular biology, chemistry, neurosciences, autoimmune diseases, cardiovascular diseases and synthetic vaccine development;

WHEREAS, Scripps desires to establish and operate Scripps Florida;

WHEREAS, the Enabling Statute contemplates that Funding and Scripps will enter into this Agreement governing the disbursement and use of Grant Funds; and

WHEREAS, Scripps and Funding desire to make certain representations, warranties, covenants and agreements governing their respective rights and obligations with respect to, among other things, the establishment and operation of Scripps Florida and the disbursements by Funding of the Grant Funds to Scripps, consistent with the provisions of the Enabling Statute and the Public Records Statute.

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions contained herein, the parties hereby agree as follows:

ARTICLE 1

DEFINITIONS

Capitalized terms used in this Agreement without other definition shall, unless expressly stated otherwise, have the meanings specified in this Article 1.

“Affiliate” means any Person, other than Scripps, directly or indirectly controlling, controlled by, or under common control with Scripps.

“Agreement” means this Operating and Funding Agreement. Words such as “herein,” “hereafter,” “hereof,” “hereto,” “hereby” and “hereunder,” when used with reference to this Agreement, refer to this Agreement as a whole, unless the context otherwise requires.

“Annual Science Report” means the annual report that describes the scientific achievements of Scripps Florida, as set forth in Section 9.4.

“Audit Committee” means the committee of the Board of Trustees, or any successor committee with substantially similar functions, responsible for, among other things, engaging the auditors, determining the scope of the audit, considering and reporting to the Board of Trustees on the quality of Scripps’ financial statements and financial reporting procedures, and reviewing and assessing internal controls.

“Biomedical Fund” means the Florida Department of Health’s Biomedical Research Trust Fund, or, if such fund ceases to exist for any reason, another Florida state trust fund that supports biomedical research, as determined by law.

“Board of Trustees” means the governing body with the exclusive power to direct and control the operational affairs of Scripps.

“Business Plan” means the business plan of Scripps Florida, which includes the Initial Budget and the Organizational Plan, and may include, among other information, strategic goals and objectives, general research and development information, status reports, and study updates. The Business Plan shall cover the first seven years of the project. The Business Plan shall include a proposed budget, including a staffing plan, an equipment purchase budget, and proposed operating expenses. The staffing plan shall identify the number and average salaries of positions to be funded in Florida by means of the initial annual disbursement of Grant Funds to be provided to Scripps by Funding. A copy of the Business Plan is attached hereto as Schedule “1,” as such Business Plan may be amended from time to time by the Board of Trustees, the Executive Committee or such person as may be authorized by the Board of Trustees or the Executive Committee.

“Ceased Operations” means, commencing on the second anniversary of the Effective Date, Scripps’ reduction of the total number of professors, associate professors, assistant professors, research faculty and staff scientists in Florida by more than 50% compared to the total number of such positions, measured in the aggregate, that Scripps was scheduled to have created as of the applicable date. For example, in June 2006, the second year would have been completed, and Scripps would be scheduled to have created a total of 51 such positions. If Scripps had reduced the aggregate number of such positions at Scripps Florida to 25 or less, it would have Ceased Operations for purposes of this definition.

“Code” means the United States Internal Revenue Code of 1986, as amended, and as to any specific Code section, any corresponding provision or provisions of any succeeding law.

“Effective Date” means January 30th, 2004; provided, however, if the initial Grant hereunder has not been disbursed to Scripps by February 6, 2004, then the Effective Date shall be the date of such initial disbursement of Grant Funds.

“Enabling Statute” means Chapter 2003-420, Laws of Florida, codified as Florida Statutes, Section 288.955 (2003).

“Executive Committee” means the executive committee of the Board of Trustees of Scripps, or any successor committee with substantially similar functions to those currently delegated by the Board of Trustees to its executive committee.

“Event of Default” shall have the meaning set forth in Section 13.1 of this Agreement, after declaration of such Event of Default by the affirmative vote of not less than seven of the nine members of the board of directors of Funding.

“Funding” means Scripps Florida Funding Corporation, a Florida not-for-profit corporation.

“Funding Expenses” means that portion of the Grant Funds that Funding may require for its staffing and necessary administrative expenses, including, but not limited to, travel and per diem and audit expenditures, which expenses shall not exceed \$300,000 in the first year after the Effective Date and \$200,000 per year in each subsequent year.

“Funding Material Adverse Effect” means a material adverse change in or effect on the operations, condition (financial or otherwise), or in the “change in unrestricted net assets,” affairs, or prospects, whether or not in the ordinary course of business, of Funding, or any change that would reasonably be expected to jeopardize the ability of Funding to make any disbursement to Scripps that is otherwise required to be made pursuant to this Agreement.

“Funding Securities” means 15% of the amount of securities Scripps receives, if any, from a third party licensee as payment of some or all of the Royalty Revenue due from such third party licensee.

“GAAP” means accounting principles generally accepted in the United States of America, applied on a consistent basis.

“Governmental Body” means any: (a) nation, state, county, city, town, village, district, or other jurisdiction of any nature; (b) federal, state, local, municipal, foreign, or other government; (c) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, official, or entity and any court or other tribunal); (d) multi-national organization or body; or (e) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature.

“Grant” means disbursement of the Grant Funds, subject to the terms and conditions of the Enabling Statute and this Agreement.

“Grant Funds” means an aggregate of \$310,000,000 plus the investment income thereon and less the Funding Expenses, which funds were appropriated by the State of Florida for Scripps Florida and disbursed to OTTED for further disbursement to Funding, and subsequently for disbursement by Funding to Scripps as grants in accordance with the terms and conditions of the Enabling Statute and this Agreement.

“Initial Budget” means the line item budget of Scripps Florida included as part of the Business Plan, which includes a detailed line item budget for the first year of operations and a less detailed line item budget for the succeeding six years of operation, and shows the total costs for each category of expenditures and the amount of each line item to be funded from the Grant Funds, as may be revised from time to time with the approval of the Board of Trustees, and which shall be revised each year not less than 90 days prior to each Funding Date to add a detailed line item budget for the next fiscal year.

“Material Adverse Effect” means a material adverse change in or effect on the business, condition (financial or otherwise), or in the “change in unrestricted net assets,” affairs or prospects, whether or not in the ordinary course of operations, of Scripps (considered as one enterprise), which change would reasonably be expected to jeopardize the ability of Scripps to continue to conduct its core operations in the future.

“Material Default” means an Event of Default set forth in Section 13.1 (e), (f), (g), (h), (i), (j), (k) or (l).

“Maximum Reinvestment Amount” means the maximum amount that Scripps shall be required to remit for deposit in the Biomedical Fund.

“Naming Opportunities” means charitable donations from any Person in consideration for the right to have all or a portion of the facility to be built for or leased in Florida to Scripps Florida, named for or in the memory or honor of any Person, living or dead, or for any entity.

“Net Royalty Revenues” means all Royalty Revenues less the cost of obtaining, maintaining and enforcing related patent and intellectual property rights, both foreign and domestic.

“Organizational Plan” means the plan of organization for Scripps Florida required to be submitted to Funding, which plan shall include job titles and duties.

“OTTED” means the Office of Tourism, Trade and Economic Development.

“OTTED Agreement” means that agreement between Funding and OTTED with respect to the Grant Funds.

“Person” means any partnership, joint venture, association, corporation, limited liability company, trust or other entity, or, where the contexts so permits or requires, a natural person.

“Public Records Statute” means Florida Statutes, Section 288.9551.

“Reinvestment” means the amount of money to be remitted by Scripps to Funding for further remittance to the Biomedical Fund pursuant to Article 10 hereof.

“Report” means the annual report prepared by Scripps for Scripps Florida each year and delivered to Funding by August 31st of each year.

“Report Year” means the twelve months ended June 30th.

“Royalty Commencement Date” means that date which is six months after the final disbursement of Grant Funds.

“Royalty Revenues” means all revenues, including the revenues from the sale of stock held by Scripps, generated from the licensing or transfer of inventions, methods, processes, and other patentable discoveries conceived or reduced to practice using the Scripps’ Florida facilities or Scripps’ Florida employees, in whole or in part, and to which Scripps becomes entitled during the twenty (20) years following the Effective Date.

“Scripps Florida” means the state-of-the-art biomedical research institution and campus to be established and operated in Florida by Scripps.

“Security Agreement” means the security agreement executed on the date hereof between Scripps and Funding, the form of which is attached hereto as Exhibit “A.”

“Security Interest” means the security interest of Funding granted by Scripps pursuant to the Security Agreement.

“Security Interest Default” means an Event of Default set forth in Section 13.1 (e), (f), (g), (i), (k) or (l); provided, however, that with respect to Section 13.1 (i) or (k), a Security Interest Default shall not occur until ninety (90) days after written notice thereof shall have been given to Scripps if Scripps is using its best efforts to cure such breach during such ninety (90) day period.

“Treasury Regulations” means the regulations issued by the United States Treasury Department under the Code, as such regulations may be amended from time to time, including any successor regulations.

ARTICLE 2

ESTABLISHMENT OF SCRIPPS FLORIDA

2.1 Establishment of Scripps Florida; Purpose. Scripps Florida shall be a part of Scripps, a private not-for-profit public benefit corporation, or a division, subsidiary, affiliate or entity formed by Scripps to establish a state-of-the art biomedical research institution and campus in Florida. Scripps Florida shall promote research and development, focusing on three

major areas of activity: biomedical research, advanced technologies, and drug discovery, in accordance with the Business Plan. The parties acknowledge and agree that Scripps is an independent research institute controlled and directed by its Board of Trustees and management, that Scripps controls and directs its research and related affairs, and that Funding shall not control or direct Scripps' research or, except as expressly set forth in this Agreement, its related affairs.

2.2 Name. Scripps Florida shall operate as "Scripps Florida" or such other name as determined by Scripps. Scripps shall make such filings and take such other actions as shall be necessary for Scripps Florida to conduct its operations under such name.

2.3 Principal Executive Office. Scripps shall designate a principal executive office of Scripps Florida within the State of Florida, which may be changed from time to time by the Board of Trustees. Scripps shall promptly notify Funding of the location of its principal executive office and of any changes thereto.

2.4 Term. The term of this Agreement shall end twenty (20) years after the Effective Date, unless sooner terminated in accordance with this Agreement.

2.5 Scripps' Tax-Exempt Status; Funding to Use Best Efforts to Obtain Tax-Exempt Status as 501(c)(3) Organization. Funding acknowledges and agrees that maintenance of Scripps' tax-exempt status is critical to the goals set forth herein, and Funding agrees it shall impose no requirements upon Scripps that would jeopardize Scripps' tax exempt status or the tax exempt status of any Scripps' obligation for the purposes of federal, state and local laws. Funding further agrees it will use its reasonable best efforts to obtain tax-exempt status for Funding as a Code Section 501(c)(3) organization.

2.6 Scripps' Federal Funding. Funding agrees it shall not impose any requirements upon Scripps that would reasonably be expected to jeopardize Scripps' federal financial grants or to jeopardize Scripps' ability to obtain federal financial grants in the future. In addition, Funding agrees that this Agreement is subject to the requirements of Scripps' federal financial grants and shall not be interpreted in a manner that would violate any term or condition of such grants.

ARTICLE 3

GRANT OF APPROPRIATED FUNDS

3.1 Terms of Grant. Funding agrees to distribute the Grant Funds to Scripps at such times and on the terms and conditions hereinafter set forth. Scripps shall make Reinvestment payments to Funding for further remittance to the Biomedical Fund as set forth in the Enabling Statute and Article 10 herein.

3.2 Use of Grant Funds. The proceeds of the Grant Funds shall be used by Scripps in a manner that is consistent with the Business Plan and the Initial Budget, as such Business Plan and Initial Budget may be amended from time to time in accordance with the terms and conditions of this Agreement. Grant Funds may not be disbursed or expended for activities that

do not principally benefit or that are not directly related to the establishment or operation of Scripps Florida except upon the approval of the affirmative vote of at least seven of the nine members of the board of directors of Funding. In all cases, a total amount of not less than \$45 million of Grant Funds shall be used to acquire research equipment for the Scripps' Florida facility in Florida and to pay for related maintenance of the equipment.

3.3 Prohibition on Use of Grant Funds for Lobbying. Grant Funds may not be used for the purpose of lobbying any branch or agency of state government or any political subdivisions of the state, or for any political purpose.

3.4 Ownership of Discoveries, Inventions and Other Technology. The parties acknowledge and agree that, as between Scripps and Funding, all discoveries, inventions and other technology developed by Scripps as a result, either directly or indirectly, of its Scripps Florida operations or its Scripps Florida employees shall be owned exclusively by Scripps, and Funding shall have no legal interest, right or license in any such discoveries, inventions and other technology. Nothing in this Section 3.4 shall alter or reduce the payment of Net Royalty Revenues pursuant to Article 10 hereof. Nothing contained in this Agreement shall in any way limit or restrict the right of Scripps to commercialize or license its discoveries, inventions and other technology.

3.5 Publications. Funding acknowledges and agrees that Scripps shall have the right to publish (whether orally, in writing, or otherwise) results of its research in accordance with its policies which encourage publication of all research conducted at Scripps.

3.6 Other Funding Sources. Nothing contained in this Agreement shall in any way limit or restrict Scripps' right to receive funds from sources other than Funding.

ARTICLE 4

TIMING AND CONDITIONS OF GRANTS

4.1 Grant. Subject to the terms and conditions of this Agreement, Funding shall disburse Grant Funds to Scripps on the dates requested by Scripps as Funding Dates (as defined below), and as otherwise provided, herein.

4.2 Timing of Disbursement of Grant Funds. Subject to compliance by Scripps with all of the applicable conditions to funding set forth in Section 4.4:

(a) Disbursement of Grant Funds by Funding shall be approved by Funding in not less than seven annual disbursements (in each case, a "Funding Date") and each annual disbursement shall be disbursed in quarterly installments as set forth in Schedule "4.2(a)," commencing on the Effective Date and ending on a date not later than December 31, 2010 (or such later date as may be computed in accordance with this Agreement, including Section 15.16 herein), on such business days as may be requested by Scripps; and

(b) the amount of each annual disbursement shall be as set forth on Schedule “4.2(b)” hereto.

4.3 Request for Grant Funds. With respect to each annual request for Grant Funds, Scripps shall submit to Funding, not less than two weeks prior to each Funding Date (or on January 30, 2004 with respect to the initial grant), a completed written disbursement request (each, a “Grant Request”), executed by its President or other authorized officer, substantially in the form attached hereto as Exhibit “B”.

4.4 Conditions to Funding.

(a) General Conditions. Funding shall disburse the Grant Funds to Scripps upon receipt of an executed Grant Request as set forth in Section 4.3, provided no Material Default has been declared and is continuing.

(b) Conditions to Initial Grant. Funding’s obligation hereunder to make the initial Grant is conditioned upon the approval of at least five of the nine members of the board of directors of Funding and upon Funding’s receipt of the following documents and Scripps’ satisfaction of the following conditions:

(i) Funding’s receipt of the Grant Funds from OTTED pursuant to the OTTED Agreement;

(ii) Funding’s receipt of a timely and properly executed Grant Request;

(iii) Funding’s receipt and approval of the detailed Business Plan;

(iv) Funding’s receipt of a legal opinion of in-house counsel for Scripps, dated as of the date of the Grant Request, substantially in the form attached hereto as Exhibit “C” (the “Legal Opinion”); and

(v) Funding’s receipt of a fully executed and enforceable agreement for Scripps to use initial temporary facilities of at least 5,000 square feet in Florida.

(c) Conditions to Subsequent Grants. Funding’s obligation hereunder to make any of the subsequent Grants is conditioned upon the approval of at least five of the nine members of the board of directors of Funding, upon Funding’s receipt of the following documents and Scripps’ satisfaction of the following conditions in connection with each subsequent Grant Request:

(i) Funding’s receipt of a timely and properly executed Grant Request;

(ii) Funding’s receipt, not later than 120 days after the end of Scripps’ fiscal year, of (x) the annual audited financial statements of Scripps, which audited financial statements comply with Section 9.2(a), and (y) the Annual Science Report;

(iii) Funding's receipt, by August 31st, of the annual Report required by Section 9.3 for the Report Year, and if there have been any material developments between the date of such Report and the end of the calendar year, Funding's receipt, by the following February 15th, of an updated progress report, which shall address those items contained in the Report, including any changes in the budgeted expenditures for the next annual disbursement of Grant Funds;

(iv) Funding's receipt, by February 15th, of any proposed changes to the Business Plan and the reasons therefor;

(v) Funding's receipt of a legal opinion of in-house counsel for Scripps, dated as of the date of the Grant Request, substantially in the form set forth in Exhibit "C", or letter from such counsel confirming the accuracy of the Legal Opinion as of the date of each such subsequent Grant Request; and

(vi) Scripps' satisfaction of the appropriate disbursement conditions set forth on Schedule "4.4(c)" hereto.

Funding may reduce or eliminate funding in any year if Scripps has Ceased Operations in Florida, or if Scripps has failed to commit in writing to maintain operations in Florida for the succeeding year.

4.5 Failure to Comply with Grant Request. If Scripps submits a properly executed Grant Request in accordance with this Article 4, which Grant Request indicates that Scripps has complied with all of the applicable conditions set forth in Section 4.4(c) and all of the applicable disbursement conditions set forth in Schedule 4.4(c), Funding has not notified Scripps that it is in violation of Article 11, and Funding has not declared a Material Default, and yet Funding fails to disburse the annual disbursement of Grant Funds requested by Scripps and computed in accordance with Section 4.2 and Schedule 4.2(b) within five (5) business days after the applicable Funding Date, Scripps may demand arbitration under Section 15.11, but on an expedited basis. The purpose of such arbitration shall be to determine: (i) whether Scripps has violated Article 11, (ii) whether an event has occurred, which upon declaration by the affirmative vote of not less than seven of the nine members of the board of directors of Funding would be a Material Default, and (iii) whether Scripps has failed to satisfy any of the conditions in Section 4.4(c)(i) – (vi); and if the arbitrators' determination as to (i), (ii) and (iii) is in the negative, to require Funding to disburse the applicable annual disbursement of Grant Funds to Scripps. As part of such expedited arbitration, Funding shall be required to select its arbitrator within one week after receipt of Scripps' Notice (as defined in Section 15.11), the parties shall use their best efforts to have the arbitrators select the third arbitrator within one week after Funding has selected its arbitrator, and the parties shall use their best efforts (and the arbitrators shall be selected only if they agree that they will use their best efforts) to hold the arbitration within thirty (30) days after the date of the Notice. The results of the arbitration shall be binding on both parties and may be enforced (including the application of injunctive relief) by a court of competent jurisdiction.

ARTICLE 5

SECURITY FOR REINVESTMENT

Contemporaneously with the execution of this Agreement, Scripps and Funding shall execute the Security Agreement. With respect to any equipment that is subject to the Security Agreement, Scripps shall maintain an inventory of such equipment with a useful life of more than one (1) year and a cost of \$5,000 or more.

ARTICLE 6

REPRESENTATIONS AND WARRANTIES OF SCRIPPS

Scripps represents and warrants to Funding on the date hereof and as of each Funding Date that, except as set forth in the disclosure letter dated as of the date of this Agreement or as of the applicable Funding Date, as the case may be, from Scripps to Funding, executed and delivered to Funding immediately prior to the execution and delivery of this Agreement and on each Funding Date (the “Disclosure Letter”):

6.1 Scripps has been duly incorporated or organized and is validly existing as a not-for-profit corporation under the laws of the jurisdiction in which it is chartered. Scripps is in good standing under the laws of the jurisdiction in which it is chartered and is duly qualified to do business as a foreign corporation under the laws of each jurisdiction which requires such qualification wherein it owns or leases properties or conducts business, except in such jurisdictions in which the failure to be so incorporated or organized and validly existing or to so qualify, in the aggregate, would not reasonably be expected to have a Material Adverse Effect. Scripps does not have any Affiliates other than those listed on Schedule “6.1.”

6.2 Scripps has full corporate power to own or lease its properties and conduct its operations and has full corporate power to enter into this Agreement and to carry out all the terms and conditions hereof.

6.3 Scripps has not issued any membership interests under the California nonprofit corporation law. The Board of Trustees and officers of Scripps are empowered to make all business decisions with respect to Scripps, and such Board of Trustees has not delegated, whether by contract or through its Articles of Incorporation or by-laws, any of the powers to manage or operate Scripps to any Person, except to the extent such Board of Trustees has delegated some of its powers to its Executive Committee, its Audit Committee and its compensation committee, or such other committees as it is permitted to create under California nonprofit corporation law.

6.4 Deloitte & Touche LLP, or another nationally recognized accounting firm selected as the auditors for Scripps in the future, is or will be, as the case may be, an “independent” public accountant with respect to Scripps within the meaning of such term in the Securities Act of 1933, as amended (the “Securities Act”), and the applicable rules and regulations thereunder.

Notwithstanding the application of such definition, Scripps is not representing that its activities are governed by the Securities Act.

6.5 The financial statements (including the schedules and notes thereto) of Scripps at September 30, 2003 and for the twelve months then ended, fairly present in all material respects the financial position of Scripps, and its results of operations as of the dates and for the periods specified therein; since the date of such financial statements, there has been no change nor any development or event involving a prospective change which has had or would reasonably be expected to have a Material Adverse Effect; and such financial statements have been prepared in accordance with GAAP consistently applied throughout the periods involved (except as otherwise expressly noted in the notes thereto).

6.6 Scripps maintains a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's general or specific authorizations; (ii) transactions are recorded as necessary to permit preparation of financial statements in conformity with GAAP and to maintain asset accountability; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

6.7 This Agreement has been duly authorized, executed and delivered by Scripps and constitutes a valid and binding agreement of Scripps, enforceable against Scripps in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

6.8 The authorization, execution and delivery of this Agreement and the performance, as of the date hereof, of the Agreement by Scripps do not (i) require the consent, approval, authorization, order, registration or qualification of, or filing with, any governmental authority or court, or body or arbitrator having jurisdiction over any of Scripps or its assets or properties, except for consents, approvals, authorizations, orders, registrations or qualifications of, or filings with, any governmental authority in connection with the temporary or permanent facilities for Scripps Florida, except for such filings as may be necessary or appropriate to perfect the Security Interest, or except where the failure to obtain such consents, approvals, authorizations, orders, registrations or qualifications, or make such filings, would not reasonably be expected to have a Material Adverse Effect; or (ii) conflict with, result in a breach or violation of, or constitute a default under, (a) any contract, indenture, mortgage, deed of trust or loan or credit agreement, note, lease or other agreement or instrument to which Scripps is a party or by which Scripps or any of its properties is bound, except for such conflicts, breaches, violations or defaults which would not reasonably be expected to have a Material Adverse Effect, or (b) the charter or by-laws of Scripps, or (c) any statute, rule or regulation or any judgment, order or decree of any governmental authority or court or any arbitrator applicable to Scripps, except for such conflicts, breaches, violations or defaults which would not reasonably be expected to have a Material Adverse Effect.

6.9 No legal or governmental proceedings or investigations are pending or, to the knowledge of Scripps, threatened to which Scripps is a party or to which the property of Scripps is subject, except for such proceedings or investigations that would not reasonably be expected to have a Material Adverse Effect.

6.10 After giving effect to the grant of the Funds and the execution, delivery and performance of this Agreement, Scripps will not be (i) insolvent, (ii) left with unreasonably small capital with which to engage in its anticipated operations, or (iii) incurring debts or other obligations beyond its ability to pay such debts or obligations as they become due.

6.11 No “prohibited transaction” (as defined in Section 406 of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder (“ERISA”), or Section 4975 of the Code or “accumulated funding deficiency” (as defined in Section 302 of ERISA) or any of the events set forth in Section 4043(c) of ERISA (other than events with respect to which the 30-day notice requirement under Section 4043 of ERISA has been waived)) has occurred, exists or is reasonably expected to occur with respect to any employee benefit plan (as defined in Section 3(3) of ERISA) that Scripps maintains, contributes to or has any obligation to contribute to, or with respect to which Scripps has any liability, direct or indirect, contingent or otherwise (a “Plan”), which would reasonably be expected to have a Material Adverse Effect; each Plan is in compliance with applicable law, including ERISA and the Code, except where non-compliance would not reasonably be expected to have a Material Adverse Effect; Scripps has not incurred and does not expect to incur liability under Title IV of ERISA with respect to the termination of, or withdrawal from, any Plan, which liability would reasonably be expected to have a Material Adverse Effect; and each Plan that is intended to be qualified under Section 401(a) of the Code is so qualified and nothing has occurred, whether by action or failure to act, which would reasonably be expected to cause the loss of such qualification, except where such action or failure to act would not reasonably be expected to have a Material Adverse Effect

6.12 No proceeding looking toward merger, amalgamation, consolidation, liquidation or dissolution of Scripps, or the sale of all or substantially all of the assets of Scripps is pending or contemplated.

6.13 Scripps owns or otherwise possesses or can acquire on reasonable terms adequate rights to use all material patents, patent rights, inventions, trademarks, service marks, trade names and copyrights, know-how (including trade secrets and other unpatented and/or unpatentable proprietary information), licenses, all applications and registrations for each of the foregoing, and all other material proprietary rights and confidential information, systems or procedures (collectively, the “Intellectual Property”) necessary to conduct its operations as currently conducted, except where the absence of such rights or information would not reasonably be expected to have a Material Adverse Effect; and Scripps has not received any notice nor does it have other actual knowledge of any infringement of the rights of any third party with respect to any of the Intellectual Property, which infringement would reasonably be expected to have a Material Adverse Effect.

6.14 Scripps is insured by insurers of recognized financial responsibility against such losses and risks, in such amounts, and with such deductibles as are prudent for the operations in

which it is engaged; and Scripps has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its operations at a cost that would not reasonably be expected to have a Material Adverse Effect.

6.15 Scripps possesses all certificates, authorizations and permits (collectively, “Governmental Licenses”) issued by the appropriate federal, state, local, provincial or foreign regulatory authorities necessary to conduct its operations, except where the failure to have such Governmental Licenses would not reasonably be expected to have a Material Adverse Effect; Scripps is in compliance with the terms and conditions of all such Governmental Licenses, except where the failure so to comply would not reasonably be expected to have a Material Adverse Effect; and all of the Governmental Licenses are valid and in full force and effect, except where the invalidity of such Governmental Licenses or the failure of such Governmental Licenses to be in full force and effect would not reasonably be expected to have a Material Adverse Effect; and Scripps has not received any notice of proceedings relating to the revocation or modification of any such certificate, authorization or permit that would reasonably be expected to have a Material Adverse Effect.

6.16 (a) Scripps is and has been in compliance with all applicable laws, statutes, ordinances, rules, regulations, orders, judgments, decisions, decrees, standards, and requirements (collectively, “Legal Requirements”) relating to: pollution or protection of human health and safety from pollution; management, disposal or release of any chemical substance, product or waste; and protection, cleanup, remediation or corrective action relating to the environment or natural resources (collectively, “Environmental Law”);

(b) Scripps has obtained and is in compliance with the conditions of all permits, authorizations, licenses, approvals, and variances necessary under any Environmental Law for the continued conduct in the manner now conducted of its operations (collectively, “Environmental Permits”);

(c) There are no past or present conditions or circumstances, including, but not limited to, pending changes in any Environmental Law or Environmental Permits, that are likely to interfere with the conduct of the operations of Scripps in the manner now conducted or which would interfere with compliance with any Environmental Law or Environmental Permits; and

(d) There are no past or present conditions or circumstances at, or arising out of, the operations, assets and properties of Scripps or any operations, assets or properties formerly leased, operated or owned by Scripps, including, but not limited to, on-site or off-site disposal or release of any chemical substance, product or waste, which may give rise to: (i) liabilities or obligations of Scripps for any cleanup, remediation or corrective action under any Environmental Law; (ii) claims against Scripps arising under any Environmental Law for personal injury, property damage, or damage to natural resources; (iii) liabilities or obligations incurred by Scripps to comply with any Environmental Law; or (iv) fines or penalties against Scripps arising under any Environmental Law;

except in the case of each of (a), (b), (c) or (d), for any non-compliance or condition or circumstance that would not reasonably be expected to have a Material Adverse Effect.

6.17 No default exists, and no event has occurred that, with notice or lapse of time or both, would constitute a default in the due performance and observation of any term, covenant or condition of any indenture, mortgage, deed of trust, lease or other agreement or instrument to which Scripps is a party or by which Scripps or any of its properties is bound which, after notice or lapse of time or both, would reasonably be expected to have a Material Adverse Effect.

6.18 Scripps has filed all foreign, federal, state, provincial and local tax returns that are required to be filed or have requested extensions thereof and have paid all taxes required to be paid by them and any other assessment, fine or penalty levied against them, to the extent that any of the foregoing is due and payable, except for any such assessment, fine or penalty that is currently being contested in good faith and for which Scripps retains adequate reserves and except in each case for any noncompliance that would not reasonably be expected to have a Material Adverse Effect. Scripps has received a determination from the Internal Revenue Service that it meets the requirements of Section 501(c)(3) of the Code, and Scripps is in material compliance with the terms of such determination.

6.19 No labor dispute with the employees of Scripps exists or, to the knowledge of Scripps, is threatened or imminent, which would reasonably be expected to have a Material Adverse Effect, and Scripps is not aware of any existing or imminent labor disturbance by the employees of Scripps' principal suppliers, manufacturers, customers or contractors, which would reasonably be expected to have a Material Adverse Effect.

6.20 Scripps is in compliance with the terms, conditions, rules, mandates and policy guidelines pertaining to all applicable federal, state and private financial grants, sponsored research agreements and funding contracts from which Scripps derives revenue, including, but not limited to, all related financial and progress reporting and disclosure requirements, except for any non-compliance that would not reasonably be expected to have a Material Adverse Effect.

6.21 Scripps is and has at all times been in compliance with all federal, state, local, provincial and foreign laws, statutes, ordinances, rules, regulations, decrees, orders, and permits applicable to the operation of Scripps' facilities and the conduct of its research activities and operations, including, without limitation, to the extent applicable, (a) Medicare, Medicaid, other federal, state and local health care and reimbursement laws and regulations, (b) insurance laws and regulations and (c) licensing and certificate laws and regulations covering any aspect of the operations of Scripps, except, in each case, where such non-compliance would not reasonably be expected to have a Material Adverse Effect. Scripps has not received any notification asserting, and has no knowledge of, any present or past failure to comply with, or any violation of, such laws, statutes, ordinances, rules, regulations, decrees, orders, and permits, except where such non-compliance or violation would not reasonably be expected to have in a Material Adverse Effect.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES OF FUNDING

Funding represents and warrants to Scripps on the date hereof as follows:

7.1 Funding has been duly incorporated and is validly existing as a not-for-profit corporation under the laws of Florida. Funding is in good standing under the laws of Florida.

7.2 Funding has full corporate power to own or lease property and conduct its operations, and to enter into this Agreement and to carry out all the terms and provisions hereof.

7.3 This Agreement has been duly authorized, executed and delivered by Funding and constitutes a valid and binding agreement of Funding, enforceable against Funding in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfers), reorganization, moratorium or similar laws affecting enforcement of creditors' rights generally and except as enforcement thereof is subject to general principles of equity (regardless of whether enforcement is considered in a proceeding in equity or at law).

7.4 The authorization, execution and delivery of this Agreement and the performance of the Agreement by Funding do not (i) require the consent, approval, authorization, order, registration or qualification of, or filing with, any governmental authority or court, or body or arbitrator having jurisdiction over Funding or its assets or properties, except for such consents as are being obtained concurrently with the execution of this Agreement, or (ii) conflict with, result in a breach or violation of, or constitute a default under, (a) any contract, indenture, mortgage, deed of trust or loan or credit agreement, note, lease or other agreement or instrument to which Funding is a party or by which Funding or any of its properties is bound, except for such conflicts, breaches, violations or defaults which would not reasonably be expected to have a Funding Material Adverse Effect, or (b) the Articles of Incorporation or by-laws of Funding, or (c) any statute, rule or regulation or any judgment, order or decree of any governmental authority or court or any arbitrator applicable to Funding, except for such conflicts, breaches, violations or defaults which would not reasonably be expected to have a Funding Material Adverse Effect.

ARTICLE 8

BOARD OF TRUSTEES; COMMITTEES; MEETINGS OF TRUSTEES

8.1 Board of Trustees and Committees.

(a) Until the date on which all Grant Funds have been disbursed to Scripps or otherwise remitted for the benefit of the Biomedical Fund as provided in Section 11(a) of the Enabling Statute, Funding shall have the right to nominate two people to the Board of Trustees. Assuming that Funding's nominees are reasonably acceptable to Scripps, based on standards Scripps applies to the selection of board members consistent with past practices, Scripps shall recommend Funding's nominees to be elected to the Board of Trustees of Scripps. The term of each of Funding's members of the Board of Trustees shall be three (3) years.

(b) Until the date on which all Grant Funds have been disbursed to Scripps or otherwise remitted for the benefit of the Biomedical Fund as provided in Section 11(a) of the Enabling Statute, the Board of Trustees shall continue to have an Executive Committee. Assuming that at least one of Funding's nominees to the Board of Trustees is reasonably acceptable to Scripps to become a member of the Executive Committee, based on standards Scripps applies to the selection of Executive Committee members consistent with past practices, Scripps shall recommend that its Board of Trustees appoint one (1) such Funding nominee to the Executive Committee.

(c) Until the date on which all Grant Funds have been disbursed to Scripps or otherwise remitted to the Biomedical Fund as provided in Section 11(a) of the Enabling Statute, the Board of Trustees shall continue to have an Audit Committee. Assuming that at least one of Funding's nominees to the Board of Trustees satisfies the criteria to become a member of the Scripps' Audit Committee and that such nominee is reasonably acceptable to Scripps to become a member of the Audit Committee, based on standards Scripps applies to the selection of Audit Committee members consistent with past practices, Scripps shall recommend that its Board of Trustees appoint one (1) such Funding nominee to the Audit Committee.

(d) In the event of a vacancy of either of its appointed trustees, Funding will nominate a replacement, and assuming such replacement is reasonably acceptable to Scripps for such position, Scripps will recommend that its Board of Trustees elect or appoint such replacement to the Board of Trustees, or committee, as applicable.

(e) Funding's members of the Board of Trustees shall receive all reports and information from the President and other officers of Scripps as he or she may request, to the extent such reports and information are available to other members of the Board of Trustees, and shall be bound by the same confidentiality requirements applicable to other members of the Board of Trustees.

8.2 Board of Trustees Meetings.

(a) At least one meeting of the Board of Trustees each year shall be held in Florida.

(b) The Articles of Incorporation and Bylaws of Scripps shall not be amended to be inconsistent with the terms set forth in this Article 8.

8.3 Business Plan. The Business Plan, which includes the initial Business Plan for Scripps Florida and the Initial Budget, is attached hereto as Schedule “1”, and is hereby deemed to have been approved by Scripps and Funding. Scripps shall cause any amendments thereto to be approved by the Board of Trustees. As soon as practicable after the approval of any amendments to the Business Plan by the Board of Trustees, Scripps shall furnish a copy of the amended Business Plan to Funding, which identifies the amendments and explains the reasons therefor, together with the certification of the President of Scripps that such amended Business Plan complies with the requirements of the Enabling Statute and is consistent with establishing and operating a state-of-the-art biomedical research institution and campus in Florida.

8.4 Budget Approval.

(a) The Initial Budget, which is included in the Business Plan, is hereby deemed to have been approved by Scripps and Funding. Scripps shall cause such Initial Budget to be approved by the Board of Trustees.

(b) The President of Scripps shall submit a proposed budget for Scripps Florida (the “Budget”) for each fiscal year. The Budget shall include an income statement, balance sheet, and capital budget prepared consistently with the Scripps’ method of accounting, for the forthcoming fiscal year, and a cash flow statement which shall show in reasonable detail the anticipated receipts and disbursements (including anticipated expenditures) projected for Scripps Florida for the forthcoming fiscal year and the amount of any corresponding cash deficiency or surplus. The Budget shall be prepared on a basis consistent with Scripps’ financial statements and in accordance with the provisions of this Agreement.

(c) Each Budget shall be considered at the first meeting of the Board of Trustees following its submission and shall be subject to the approval of a majority of the Trustees. Promptly following the approval of the Budget by a majority of the Trustees, Scripps shall provide a copy of the Budget to Funding together with the certification of the President of Scripps that such Budget satisfies the following requirements: (i) amounts budgeted for equipment purchases meet the requirements of Schedule “4.4(c)” for such year, (ii) Grant Funds have not been budgeted for activities that do not principally benefit or that are not directly related to the establishment or operation of Scripps Florida, except upon approval of the affirmative vote of at least seven of the nine members of the board of directors of Funding, (iii) no Grant Funds have been budgeted to be used for the purpose of lobbying any branch or agency of state government or any political subdivision of Florida, or for any political purpose, and (iv) the Budget meets the requirements of the Enabling Statute.

ARTICLE 9

COVENANTS OF SCRIPPS

9.1 Treatment of Scripps Florida as a Separate Segment for Accounting Purposes. Scripps shall cause its financial books and records, including its audited financial statements, to be prepared accounting for Scripps Florida as a separate division or segment of Scripps for accounting purposes. Accordingly, all revenue and expenses of Scripps Florida shall be accounted for on a separate basis from the revenue and expenses for Scripps' California operations. Scripps shall develop a reasonable and adequate cost allocation methodology with respect to the Grant Funds and shall explain such methodology to Funding and provide such documentation with respect to the application of such methodology to Funding as is sufficient for Funding to be able to meet its monitoring obligations under the OTTED Agreement. In addition, Scripps shall establish and maintain segregated accounts for any and all Grant Funds so that the receipt and use of the Grant Funds can be easily identified.

9.2 Financial Information. Scripps shall furnish the following reports to Funding:

(a) As soon as possible after the end of each fiscal year of Scripps, and in any event within one hundred twenty (120) days thereafter, an audited consolidated balance sheet of Scripps and any Affiliates as at the end of such fiscal year, and audited consolidated statements of activities and cash flows of Scripps and any Affiliates for such year prepared in accordance with GAAP and setting forth in each case in comparative form the figures for the previous year, all in reasonable detail and accompanied by an independent auditors' report from independent public accountants of recognized national standing selected by Scripps. The audit shall be conducted in accordance with Government Auditing Standards, or Generally Accepted Auditing Standards, as applicable at the time of such audit. In addition, the schedules to the audited financial statements shall (i) include such additional schedules as are required so that the audited financial statements comply with U.S. Office of Management and Budget Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, and (ii) include additional schedules that set forth the assets and liabilities, and revenues and expenses of Scripps Florida separately from those of the rest of Scripps.

(b) As soon as possible after the end of the first, second, and third quarterly accounting periods in each fiscal year of Scripps, and in any event within forty-five (45) days thereafter, an unaudited consolidated balance sheet of Scripps and any Affiliates, as of the end of each such quarterly period, and unaudited consolidated statements of activities and cash flows of Scripps and any Affiliates for the current fiscal year to date, prepared in accordance with GAAP and setting forth in comparative form the figures for the corresponding periods of the previous fiscal year, subject to changes resulting from normal year-end audit adjustments, all in reasonable detail and certified by the principal financial officer or accounting officer of Scripps, except that such financial statements need not contain the notes required by GAAP. To the extent that Scripps already prepares similar information for other purposes, Funding shall accept such similar information in substitution for that required herein.

(c) Within ten (10) days after approval by the Board of Trustees of Scripps, the annual Budget, as so approved.

9.3 Annual Report. Scripps shall prepare the annual Report for Scripps Florida each year and deliver such annual report to Funding by August 31st of each year. The annual Report shall include, but not be limited to, the following information:

(a) an accounting of the expenditures of Grant Funds for the twelve months ended June 30th of each year (the “Report Year”) and financial commitments made by Scripps during the Report Year;

(b) data regarding the activities and performance of Scripps Florida during such Report Year and detailing the progress of Scripps in meeting its Business Plan, including but not limited to:

(i) information on the number and salary level of jobs created by Scripps within Scripps Florida, including the number and salary level of jobs created for residents of Florida;

(ii) a description of the status of the performance expectations set forth in Section 9.5 of this Agreement and the disbursement conditions set forth in Schedule 4.4(c) of this Agreement;

(iii) information on the positions and funds required to be committed for equipment for such positions by means of the next annual disbursement of Grant Funds;

(iv) commencing with the annual Report for the 2006 Report Year and ending with the Report Year after which Scripps has moved the Scripps Florida operations to its permanent facility and such facility is fully operational, a description of the status of Scripps’ relocation to its second planned temporary facility and the progress of construction activities for its permanent facility, as described in the Business Plan, including a projected date for and status of Scripps’ occupancy of its permanent facility; and

(v) commencing with the annual Report for the Report Year during which Scripps commences activities at its permanent facility, a description of the status of Scripps’ activities in its permanent facility, including its educational and outreach programs.

(c) a schedule of the shares of stock (or other securities) held by Scripps as payment of the royalty referred to in Section 10.2(a) and a report on any trades or activity concerning such stock (or other securities); and

(d) Such internal information regarding Scripps Florida as Funding may reasonably request to confirm Scripps’ compliance with the terms of this Agreement.

With respect to the information required by this Section 9.3, Scripps may, where feasible, comply with one or more of these reporting standards by submitting to Funding copies of information submitted by Scripps to the Federal government or to other organizations awarding research grants to Scripps, if such information satisfies the reporting standards of this Section 9.3. Scripps shall provide information reasonably requested by Funding and OTTED to assist their completion of the reports required by the Enabling Statute, including the required reporting by OTTED and/or Funding on:

(i) information on the amount and nature of economic activity generated through the activities of Scripps Florida; and

(ii) an assessment of factors affecting the progress toward achieving the projected biotech industry cluster associated with the Scripps Florida operations, as projected by economists on behalf of the Executive Office of the Florida Governor.

9.4 Annual Science Report. Scripps shall prepare the Annual Science Report that describes its scientific activities for Scripps Florida each year and deliver such annual report to Funding within one hundred twenty (120) days after the end of each fiscal year of Scripps. The form of the annual report will be substantially similar to the form Scripps uses at such time with respect to its California operations. A copy of the annual report Scripps currently uses with respect to its California operations is attached hereto as Exhibit "D."

9.5 Performance Expectations. Scripps, in cooperation with OTTED, shall report to Funding not less than annually on its progress in meeting certain performance expectations that reflect the aspirations of the Florida Governor and Legislature for the benefits accruing to Florida as a result of the Grant Funds. These reports shall include, but are not limited to, performance expectations addressing the following with respect to Scripps Florida:

(a) the number and dollar value of research grants obtained by Scripps with respect to Scripps Florida from the Federal Government or sources other than Florida;

(b) the percentage of total research dollars received by Scripps from sources other than Florida, which is used to conduct research activities by Scripps in Florida;

(c) the number or value of patents obtained by Scripps with respect to Scripps Florida;

(d) the number or value of licensing agreements executed by Scripps with respect to Scripps Florida;

(e) the extent to which research conducted by Scripps Florida results in commercial applications;

(f) the number of collaborative agreements reached and maintained with colleges and universities in Florida and with research institutions in Florida, including agreements that foster participation in research opportunities by public and private colleges and universities and research institutions in Florida with significant minority populations, including historically black colleges and universities;

(g) the number of collaborative partnerships established and maintained with businesses in Florida, including small businesses;

(h) the total amount of funding received by Scripps with respect to Scripps Florida from sources other than Funding, including a breakdown of amounts received from grants and from other sources;

(i) the number or value of spin-off businesses created in Florida as a result of commercialization of the research of Scripps Florida;

(j) the number or value of businesses that locate in Florida as a result of Scripps Florida;

(k) the establishment and implementation of policies to promote supplier diversity using the guidelines developed by the Office of Supplier Diversity under Section

287.09451, Florida Statutes, and to comply with the ordinances, including any small-business ordinances, enacted by applicable local governments and which are applicable to Scripps Florida;

(l) the designation by Scripps of a representative to coordinate with the Office of Supplier Diversity; and

(m) the establishment and implementation of a program to conduct workforce recruitment activities at public and private colleges and universities and community colleges in Florida, regardless of their size, which request the participation of Scripps.

9.6 Scripps to Use Reasonable Best Efforts. Scripps shall use its reasonable best efforts to operate Scripps Florida in accordance with the terms of this Agreement, in accordance with all applicable laws, in accordance with applicable policies and mandates of the federal agencies and related entities that provide Scripps with financial grants, and in general in a manner that is cost efficient and results in the greatest benefit to the public and the residents of Florida from Scripps' use of the Grant Funds. Scripps shall also implement and maintain internal controls and compliance procedures with respect to Scripps Florida.

9.7 Tax Status and Returns.

(a) Scripps shall not take any action that is reasonably likely to cause it to lose its tax exempt status granted by the Internal Revenue Service pursuant to Code Section 501 (c)(3); and

(b) Scripps shall prepare or shall direct such other Person to prepare or cause to be prepared all tax returns and statements, if any, that must be filed on behalf of Scripps with any taxing authority and shall make timely filing thereof and pay any amount shown due thereon in a timely manner except for such amounts as are being contested in good faith by Scripps. Such returns and statements, as filed, shall be correct in all material respects. Further, Scripps shall prepare or shall direct such other Person to prepare or cause to be prepared all tax statements, if any, that must, by law, be provided to any employee or other Person and shall timely deliver such statements to such Persons.

9.8 Scripps' Cooperation in Recruiting For Profit and Not-For-Profit Biotechnology and Pharmaceutical Companies. Beginning in June 2004, Scripps shall commence collaboration efforts with OTTED by complying with reasonable requests for cooperation in economic development efforts in the biomed/biotech industry and, no later than July 2004, Scripps shall designate a person who shall be charged with assisting in these collaborative efforts.

9.9 Scripps to Proceed Diligently to Implement its Business Plan. Scripps shall proceed diligently with implementing a plan to hire, associate or retain professors, associate professors, assistant professors, research faculty, staff scientists, research associates, post-doctoral students and administrative personnel within the time periods provided in the Business Plan, commencing from the date Scripps executes a lease for temporary space to be occupied by it in Florida.

9.10 Employment Issues. With respect to Scripps Florida:

(a) Scripps shall be an equal opportunity employer;

(b) Scripps shall maintain a policy of awarding preference in employment to residents of Florida, except for professional scientific staff positions requiring a doctoral degree, postdoctoral training positions, and graduate student positions; and

(c) Scripps shall use the Internet-based job listing system of the Agency for Workforce Innovation in advertising employment opportunities.

9.11 Vendors. Scripps shall maintain a policy of making purchases from vendors in Florida, with respect to Scripps Florida, to the extent it is cost-effective and scientifically sound.

9.12 Job Creation and Equipment Purchases. During the first seven (7) years of the term of this Agreement, Scripps shall create 545 positions, acquire associated research equipment for Scripps Florida, and pay for related maintenance of the equipment, in a total amount of not less than \$45 million, as described in detail in Section 1 of Schedule "4.4(c)".

9.13 Insurance. Scripps shall purchase liability insurance for Scripps Florida in such amounts and with such coverage levels and with such deductibles as are prudent for the operations in which it is engaged. Scripps shall cause Funding to be named as an additional insured on such insurance policies.

9.14 Other Reports. Scripps shall, upon request of Funding, provide Funding a copy of or access to review each report Scripps prepares with respect to Scripps Florida for federal and state funding sources, private donors and others; provided, however, that Scripps shall not be required to provide Funding copies or access to any reports where to do so would cause Scripps to violate a confidentiality obligation it has to another person and provided further that Funding agrees to maintain the confidentiality of information contained in such reports that Scripps determines to be confidential and/or proprietary.

9.15 Compliance Assessment and Audit. The parties acknowledge and agree that Funding shall have the right to review the activities of Scripps Florida to assess Scripps' operational compliance with the terms of this Agreement and with relevant provisions of law, and shall have the right to engage a third party auditor to audit the activities of Scripps' Florida to assess its financial compliance with the terms of this Agreement. The parties further acknowledge that such compliance audits will likely occur on an annual basis approximately 120 days before each Funding Date. Funding shall (a) retain an independent certified public accounting firm licensed in Florida to annually audit Scripps in accordance with Government Auditing Standards after the close of Scripps' fiscal year, (b) and shall conduct periodic onsite fiscal and programmatic monitoring of Scripps' Florida's operations commencing at least 90 days prior to the next scheduled annual disbursement to confirm compliance with the applicable disbursement conditions set forth in Schedule 4.4(c). Funding shall coordinate the engagement of its auditors with the auditors engaged by Scripps so that both auditors can audit Scripps in a manner that is not unduly burdensome to Scripps. In addition, Funding's audit shall be conducted so that it is completed approximately 135 days after the end of Scripps' fiscal year. In connection with Funding's fiscal and programmatic monitoring of Scripps, Funding shall adopt and use a monitoring instrument substantially in the form of Exhibit "E" hereto. If at any time during the disbursement period, Scripps has been shown to have expended or disbursed Grant Funds for activities that do not principally benefit or that are not directly related to the establishment or operation of Scripps in Florida, without the consent of Funding, or if Scripps is otherwise declared to be in Material Default under this Agreement, which has not been cured

pursuant to this Agreement, then Funding shall adopt procedures to require that its onsite fiscal and programmatic monitoring of Scripps' Florida's operations shall be conducted at least once every quarter for the remainder of the disbursement period and shall require Scripps to implement a plan of action to take corrective measures to restore compliance with this Agreement. Funding's rights under this Section 9.15 to conduct financial audits and programmatic monitoring shall expire upon Scripps' submission of the final Report required hereunder, or one year after the final disbursement to Scripps, whichever is later. Notwithstanding the foregoing, Funding (or its successor) shall retain the right to conduct such financial audits and obtain such reports from Scripps as are reasonably necessary to verify Scripps' compliance with the Reinvestment obligations herein. To the extent expressly applicable to Scripps, Scripps shall also comply with the provisions set forth in Exhibit B to the OTTED Agreement.

9.16 Compliance with Applicable Laws. Both Scripps and Funding shall comply with all applicable Federal and state laws in all material respects.

9.17 Scripps Not to Pledge Equipment, Materials, Supplies or Royalty Revenues. Until such time as Scripps has repaid the Maximum Reinvestment Amount, Scripps shall not pledge, grant a security interest in, or otherwise encumber any equipment (except Equipment, as defined in the Security Agreement, which Scripps pledges to Funding), materials or supplies it purchases with Grant Funds or any Royalty Revenues unless such pledge or encumbrance is necessary to comply with Scripps' federal financial grants. Notwithstanding the foregoing, Scripps shall be permitted to agree contractually to share Royalty Revenues with third parties as long as the terms of such agreements do not conflict with Scripps' obligations under Section 10 of this Agreement.

9.18 Relocation of Equipment, Materials or Supplies. If Scripps Florida has Ceased Operations for any reason, Scripps shall not remove or relocate any of the equipment, materials or supplies at Scripps Florida that were purchased with Grant Funds to a location outside the State of Florida.

9.19 Education and Internships. With respect to Scripps Florida:

- (a) Scripps shall establish accredited science degree programs; and
- (b) Scripps shall establish internship programs to create learning opportunities for educators and secondary, postsecondary, graduate and doctoral students.

ARTICLE 10

REINVESTMENT OF GRANT FUNDS

10.1 Reinvestment of Grant Funds. In consideration of the Grant, Scripps shall remit to Funding for further remittance to the Biomedical Fund, a portion of its revenues (including revenues from the sale of stock) generated from the sources described in Section 10.2. The total amount that Scripps shall be required to remit for deposit in the Biomedical Fund shall not exceed the Maximum Reinvestment Amount, which amount initially shall be \$200,000,000. At such time as the Reinvestment payments equal \$155,000,000 or this Agreement expires,

whichever is earlier, Funding shall determine whether the performance expectations and disbursement conditions set forth in this Agreement have been met. If Funding determines that the performance expectations and disbursement conditions have been met, then the Maximum Reinvestment Amount shall be reduced to \$155,000,000, and Scripps thereupon shall have no further obligation hereunder to remit any additional amounts to the Florida Department of Health.

10.2 Computation of Amount of Reinvestment Funds. Subject to the Maximum Reinvestment Amount set forth in Section 10.1:

(a) commencing on the Royalty Commencement Date, Scripps shall begin remitting 15% of its Net Royalty Revenues actually received after the Royalty Commencement Date for deposit in the Biomedical Fund; and

(b) commencing on the date hereof, Scripps shall remit 15% of the gross revenues it actually receives from Naming Opportunities for deposit in the Biomedical Fund.

Scripps Florida may use all Net Royalty Revenues generated prior to the Royalty Commencement Date and 85% of its Net Royalty Revenues generated thereafter for its working capital.

10.3 Timing of Reinvestment Payments. Except with respect to Net Royalty Revenues that are received by Scripps in securities instead of cash, the amount to be remitted for deposit in the Biomedical Fund shall be computed and paid within ten (10) business days after receipt by Scripps. At the time such payment is made, Scripps shall provide to Funding supporting documentation and calculations that explain how such amount was calculated. In the case where Scripps receives any Royalty Revenue from a third party licensee in the form of securities, Scripps shall identify 15% of the securities it receives as Funding Securities and hold such Funding Securities for the benefit of Funding until such time as Scripps can and does sell such securities, including the Funding Securities (whether in whole or in part). In addition, Scripps shall use its reasonable best efforts to cause the issuer of the securities to issue a separate certificate for the Funding Securities in the name of Funding, in which case, Scripps shall forward such separate certificate to Funding promptly after its issuance. At the time or times that Scripps sells some or all of the securities, Scripps shall assure that 15% of the securities sold are Funding Securities, and shall promptly make a Reinvestment payment in an amount equal to the net proceeds from the sale of the Funding Securities until all of the securities received by Scripps as Royalty Revenues have been sold.

10.4 Survival of Certain Rights. The Reinvestment payment obligation shall survive the expiration or other termination of this Agreement with respect to revenues described in Section 10.2(a) that are received after the expiration or termination of the Agreement, which revenues relate to the licensing of inventions that were conceived or reduced to practice during the term of this Agreement. The Reinvestment payment obligation shall survive the expiration or other termination of this Agreement with respect to revenues described in Section 10.2(b) that are received after the expiration or termination of the Agreement, which revenues relate to agreements for Naming Opportunities that were entered into during the term of this Agreement. Notwithstanding such survival, Funding acknowledges that the actual amount of Scripps'

obligation to make Reinvestment payments will depend on the amounts of Net Royalty Revenues and revenues from Naming Opportunities that are actually received by Scripps in the future and that there is no assurance or expectation that the Maximum Reinvestment Amount will ever be required to be paid.

ARTICLE 11

EXCLUSIVE FACILITY; OUTSIDE ACTIVITIES

11.1 Limitation on Additional Research Facilities. Until twelve (12) years after the Effective Date, neither Scripps nor Scripps Florida shall establish other biomedical science or research facilities in any state other than Florida or California; provided, however, nothing contained herein shall prohibit (a) Scripps and Scripps Florida from establishing or engaging in normal collaborative activities with other organizations, or (b) one or more Scripps scientists from performing normal off-site research associated with projects primarily being conducted at either the Florida or California Scripps research facility.

11.2 Certain Acknowledgments. Scripps acknowledges that Funding is disbursing the Grant Funds to it, in large part, to utilize the goodwill and competitive ability of Scripps, and that Funding has a valid and legitimate interest in protecting such goodwill by restraining Scripps' ability to establish additional research facilities and thereby dilute the value of Scripps Florida as provided in this Article 11. The limitations concerning time, territory, nature and character imposed by this Agreement upon Scripps' ability to open another research facility are reasonable and fair, and will not prevent Scripps from conducting either its California or Florida operations. Scripps further acknowledges that any violation of any term or provision of this Article 11 will have a substantial detrimental effect on Funding. Scripps has carefully considered the nature and extent of the restrictions placed upon it and the rights and remedies conferred upon Funding under the provisions of this Agreement and believes that the same are reasonable in time, scope and territory.

11.3 Modification of Covenant. Funding and Scripps recognize that the laws and public policies of the State of Florida and other applicable jurisdictions and their interpretation may be uncertain as to the scope, validity and enforceability of certain of the provisions contained in this Article 11. It is the intention of Funding and Scripps that the provisions of this Article 11 shall be enforced to the fullest extent permissible, and that the unenforceability (or the modification to conform to such laws or public policies) of any provision hereof shall not render unenforceable or impair the remainder of this Article 11. Accordingly, if any provision of this Article 11 is invalid or unenforceable, either in whole or in part, this Article 11 shall be deemed to delete or modify, as necessary, the offending provision and to alter the balance of this Article 11 in order to render the same valid and enforceable to the fullest extent permissible as aforesaid. In the event that the provisions of this Article 11 are found to exceed the period of time or scope which an arbitration tribunal can or will enforce, said period of time and scope shall, for purposes of this Article 11, consist of the maximum area or period of time or scope which an arbitration tribunal can and will enforce. Scripps acknowledges and agrees that, but for the

agreement of Scripps to comply with the covenants contained in this Article 11, Funding would not have agreed to enter into this Agreement with Scripps or to disburse the Grant Funds to Scripps.

11.4 Remedies for Violation. (a) Between the Effective Date and the date on which all Grant Funds have been disbursed to Scripps, if Funding believes that Scripps has violated this Article 11, Funding (upon the affirmative vote of not less than seven of the nine members of its board of directors) shall notify Scripps promptly of the alleged violation and Scripps shall use its best efforts to cure such violation as soon as possible thereafter. If Scripps fails to cure such violation within 30 days after receipt of such notice or denies in writing that a violation has occurred, either party may commence arbitration under Section 15.11 to resolve such dispute. Prior to the time arbitration is commenced, while the arbitration is pending, and following any final determination by the arbitral tribunal that a violation of Article 11 has occurred and is continuing, Funding may withhold disbursements of Grant Funds otherwise due to Scripps in accordance with Article 4 of this Agreement. Notwithstanding the foregoing, upon the cure by Scripps of any violation of this Article 11 or upon the determination by the arbitral tribunal that a violation of Article 11 did not occur (or occurred but has been cured), Funding shall resume disbursements of Grant Funds in accordance with Section 4 and, assuming Scripps has satisfied the applicable disbursement conditions, shall disburse both withheld amounts and amounts then due to Scripps in accordance with Schedule “4.2(b)”.

(b) Between the date on which all Grant Funds have been disbursed to Scripps and the twelfth anniversary of the Effective Date, if Funding believes that Scripps has violated this Article 11, Funding (upon the affirmative vote of not less than seven of the nine members of its board of directors) shall notify Scripps promptly of the alleged violation and Scripps shall use its best efforts to cure such violation as soon as possible thereafter. If Scripps fails to cure such violation within 30 days after receipt of such notice or denies in writing that a violation has occurred, either party may commence arbitration under Section 15.11 to resolve such dispute. Prior to and until the time any arbitration is commenced (including the case where neither party elects to arbitrate the matter), and following any final determination by the arbitral tribunal that a violation of Article 11 has occurred, the Maximum Reinvestment Amount set forth in Section 10.1 shall be fixed at \$200,000,000 regardless of whether Scripps has then met, or in the future meets, the performance expectations and disbursement conditions set forth in this Agreement that would otherwise entitle it to a reduction in the Maximum Reinvestment Amount. If arbitration is commenced, the Maximum Reinvestment Amount shall remain at the amount set forth in this Agreement without application of this Section 11.4(b) unless and until the arbitral tribunal should reach a final determination that Scripps violated this Article 11. The parties acknowledge that the damage to Funding resulting from a violation of this Section 11.4(b) by Scripps would be difficult if not impossible to determine, and that they have agreed to the remedies set forth in this Section 11.4(b) as liquidated damages for a breach of Section 11.4(b) by Scripps. The parties further acknowledge that the imposition of the remedies set forth in this Section 11.4(b) are intended to provide liquidated damages to Funding and are not intended as a penalty upon Scripps.

ARTICLE 12

INSPECTION OF SCRIPPS' RECORDS

12.1 Records to be Kept. During the term of this Agreement and thereafter, where indicated, Scripps shall keep at either its Florida or California office:

- (a) A current list of the full name and last known business, resident or mailing address of each member of the Board of Trustees, the Executive Committee and the Audit Committee;
- (b) Copies of this Agreement and all amendments hereto;
- (c) Copies of Scripps' income tax returns and reports, if any, for the five (5) most recent years;
- (d) Copies of all financial statements and financial records of Scripps Florida for the five (5) most recent years; and
- (e) During the term of this Agreement and for five (5) years after submission of the final Report (or such other period provided by federal law), Scripps (i) shall retain all Grant records, and (ii) shall ensure the retention of its independent auditors' working papers. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the five (5) year period (or such other period provided by federal law), the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the five (5) year period (or such other period provided by federal law), whichever is later.

12.2 Inspection of Scripps' Records.

(a) At any time, Funding may retain an independent certified public accountant of regional or national stature licensed in Florida pursuant to Chapter 473 of the Florida Statutes to inspect the records of Scripps in order to audit the expenditure of Grant Funds, conduct a financial statement audit of Scripps Florida and to conduct a program and compliance audit of Scripps Florida, as set forth in Section 9.15. The independent certified public accountant shall not disclose any confidential or proprietary scientific information of Scripps.

(b) At any time after an Event of Default has occurred and is continuing, the accounting books and records, the records of the Board of Trustees, and any other records maintained by Scripps and relating to Scripps Florida shall be open to inspection by Funding upon the request of Funding at any reasonable time during usual business hours. Such inspection by Funding may be made in person or by agent or attorney, and the right of inspection includes the right to copy and make extracts. Funding shall bear all expenses incurred in connection with any examination made by it or its representatives.

12.3. Funding's Covenants Regarding Confidential and/or Proprietary Records of Scripps. Subject to compliance with Chapter 119, Florida Statutes, and the Public Records Statute, Funding covenants and agrees that it shall at all times preserve and protect the confidentiality of any Scripps documents and information deemed by Scripps to be confidential and/or proprietary; provided, however, that confidential and/or proprietary information shall not include information which: (i) is or becomes generally available to the public other than as a result of a disclosure by Funding or its representatives, (ii) was available to Funding on a non-confidential basis prior to its disclosure to Funding by Scripps or its agents, or (iii) becomes available to Funding on a non-confidential basis from a source other than Scripps or its agents, provided that such source is not bound by a confidentiality agreement with Scripps known to Funding or its representatives. Funding agrees it shall not copy or otherwise take possession of any Scripps documents or records deemed by Scripps to be confidential and/or proprietary unless and until Scripps consents in writing.

ARTICLE 13

DEFAULTS AND REMEDIES

13.1 Events of Default. Each of the following shall constitute an event of default (each, an “Event of Default”) hereunder if so determined by the affirmative vote of not less than seven of the nine members of the board of directors of Funding:

(a) Any representation or warranty made by Scripps in this Agreement, without regard to any matters set forth in the Disclosure Letter, shall prove to be false in any material respect as of the Effective Date or any Funding Date, and the effect thereof is a Material Adverse Effect;

(b) a breach by Scripps of any term, covenant, obligation or agreement under this Agreement, and the continuance of such breach for a period of thirty (30) days after written notice thereof shall have been given to Scripps, except for a breach of those provisions described in subsection (h) or (i) below;

(c) an “event of default” shall have occurred under, and as defined in, any agreement entered into in the future between Scripps and the county (or local government authority) in which Scripps Florida is or will be located, which agreement relates to the development and/or ownership of the Scripps Florida biomedical research campus, and which event of default would be reasonably expect to result in a Material Adverse Effect;

(d) an event of default, as defined in the Security Agreement, shall have occurred and be continuing under the Security Agreement;

(e) Scripps' loss of an amount of federal funding that would reasonably be expected to result in a Material Adverse Effect, loss of a license necessary for it to operate, suspension of an amount of federal funding for more than 120 days that would reasonably be expected to result in a Material Adverse Effect, or suspension of a license necessary for it to operate for more than 120 days;

(f) Scripps' voluntary filing of or consent to a petition under any bankruptcy, insolvency, or reorganization law, Scripps' failure to secure the dismissal of an involuntary bankruptcy petition within sixty (60) days of filing, or a determination by a court of competent jurisdiction that Scripps is insolvent and unable to pay its debts when due;

(g) non-payment when due of any Reinvestment amount required to be paid to Funding for further remittance to the Biomedical Fund and the continuance of such non-payment for a period of thirty (30) days after written notice thereof shall have been given to Scripps;

(h) a breach by Scripps of any material term under Section 9.2, 9.3, or 9.4 of this Agreement and the continuance of such breach for a period of thirty (30) days after written notice thereof shall have been given to Scripps, unless such breach is immaterial (such as the failure by Scripps to provide an immaterial amount of information required in a report due under Section 9.2, 9.3 or 9.4) and Scripps is using its reasonable best efforts to correct such breach;

(i) a breach by Scripps of any material term under Section 9.17 of this Agreement and the continuance of such breach for a period of thirty (30) days after written notice thereof shall have been given to Scripps;

(j) a Grant Request contains a material misrepresentation;

(k) Scripps having Ceased Operations in Florida or having failed to make a commitment in writing to remain in Florida for the next year; or

(l) Scripps' loss, whether voluntarily or involuntarily, of its tax exempt status under Code Section 501(c)(3).

13.2 Material Default. The Events of Default set forth in Section 13.1 (e), (f), (g), (h), (i), (j), (k) and (l) shall, at Funding's option, also constitute a Material Default, provided that the declaration of a Material Default shall require the affirmative vote of at least seven of the nine members of the board of directors of Funding.

13.3 Remedies. (a) Upon or at any time after the occurrence of a Material Default and while such Material Default continues to exist, Funding may reduce or eliminate disbursement of the Grant Funds in any year. In addition, if the Material Default also constitutes a Security Interest Default, Funding may exercise any right, power or remedy as set forth in the Security Agreement.

(b) Upon or at any time after the occurrence of an Event of Default that is not also a Material Default, Funding shall notify Scripps that its board of directors has declared that an Event of Default has occurred, and advise Scripps that it must promptly report to Funding regarding the circumstances that led to the Event of Default, how it plans to cure such Event of Default and the time frame in which such cure will take place. If the Event of Default is not capable of cure, Scripps shall promptly report to Funding regarding the circumstances that led to the Event of Default, the impact of the Event of Default on Scripps, and in particular, on Scripps

Florida, and how Scripps intends to mitigate any anticipated or actual adverse impact on Scripps and Scripps Florida. Such reports to Funding shall occur as promptly as possible after notification to Scripps that an Event of Default has occurred, and shall continue until the Event of Default has been cured or until Funding is reasonably satisfied that any Event of Default that is not capable of being cured, cannot reasonably be expected to impede the ability of Scripps to continue to operate Scripps Florida as contemplated by this Agreement. During this time period Funding shall continue to make Grants hereunder. If Scripps and Funding are unable to resolve the Event of Default within 120 days, either by its cure or by Funding's satisfaction that Scripps can continue to operate Scripps Florida as contemplated by this Agreement, then either party may initiate arbitration against the other to reach an acceptable remedy for the Event of Default.

(c) Notwithstanding whether a Material Default or an Event of Default has occurred, Scripps shall comply with the Reinvestment provisions in accordance with and subject to the terms and conditions of this Agreement.

13.4 No Waiver. No consent or waiver, express or implied, by Funding to or of any breach or default by Scripps in the performance by Scripps of its obligations under this Agreement shall constitute a consent to or waiver of any similar breach or default by Scripps. Failure by Funding to complain of any act or omission to act by Scripps, or to declare Scripps in default, irrespective of how long such failure continues, shall not constitute a waiver by Funding of its rights under this Agreement.

ARTICLE 14

CLAIMS BY THIRD PARTIES

14.1 Claims by Third Parties against Funding. If a third party initiates a claim against Funding and/or any of its representatives, officers, directors, agents, employees or affiliates (collectively, the "Funding Persons" and individually, a "Funding Person"), and if an insurance carrier, if applicable, does not promptly agree to defend the Funding Person, the Funding Person shall promptly notify Scripps of such claim and Scripps shall have the option, but not the obligation, to assume the defense thereof so long as Scripps bears the cost of such defense. If Scripps elects to assume and bear the cost of the defense of the claim, Scripps shall, at its option, either deduct the cost thereof from future installments of Grant Funds to be disbursed to Scripps by Funding or pay such costs from unexpended Grant Funds previously disbursed to Scripps. The remedies provided in this Section 14.1 shall be in addition to the remedies set forth in Article 13 hereof.

14.2 Procedure for Defense of Claims by Third Parties.

(a) If any proceeding referred to in this Article is brought against a Funding Person, and it gives notice to Scripps of the commencement of such proceeding, Scripps shall notify the Funding Person within ten (10) days whether it will bear the cost of the defense of such claim. If Scripps elects to bear the cost of the defense of such claim, subject to Section

14.2(b), Scripps will be entitled to participate in such proceeding and to assume the defense of such proceeding with counsel reasonably satisfactory to the Funding Person (if Scripps is also a party to such proceeding and the Funding Person determines in good faith that joint representation would be inappropriate, Scripps shall retain independent counsel for the Funding Person). If Scripps assumes the defense of a proceeding, (i) no compromise or settlement of such claims may be effected by Scripps without the Funding Person's consent, unless (A) there is no finding or admission of any violation of legal requirements or any violation of the rights of any person and no effect on any other claims that may be made against the Funding Person, and (B) the sole relief provided is monetary damages that are paid in full either from Grant Funds or by Scripps; and (ii) the Funding Person will have no liability with respect to any compromise or settlement of such claims effected without its consent.

(b) Notwithstanding the foregoing, if Scripps assumes the defense of a Funding Person, and the Funding Person, acting in good faith, is not satisfied with such defense, or determines in good faith that there is a reasonable probability that a proceeding may adversely affect it or any of its Affiliates, the Funding Person may, by notice to Scripps, assume the exclusive right to defend, compromise, or settle such proceeding, but amounts may not be offset from Grant Funds to pay the costs thereof.

ARTICLE 15

MISCELLANEOUS

15.1 Notices. All notices and communications under this Agreement shall be in writing and shall be given by either (a) hand delivery, (b) certified mail, return receipt requested (postage prepaid), (c) reliable overnight commercial courier (charges prepaid), or (d) facsimile (with confirmation of transmission) to each of the parties as follows:

If to Funding:

Scripps Florida Funding Corporation
100 N.W. 20 Street
Gainesville, Florida 32603
Attention: Marshall M. Criser, Jr., Chairman
Fax: (352) 392-7676

With copies to:

The Office of Tourism, Trade and
Economic Development
Executive Office of the Governor, Suite 209
The Capitol
Tallahassee, Florida 32399-0001
Attention: Director
Fax: (850) 487-3014

Scripps Florida Funding Corporation
505 South Flagler Drive, Suite 1003
West Palm Beach, Florida 33401
Attention: Project Director
Fax: (561) 655-9344

If to Scripps:

Dr. Richard Lerner
President
The Scripps Research Institute
10550 North Torrey Pines Road
La Jolla, CA 92037
Fax: (858) 784-9899

With a copy to:

Douglas A. Bingham
Executive Vice President
and General Counsel
The Scripps Research Institute
10550 North Torrey Pines Road
La Jolla, CA 92037
Fax: (858) 784-9398

Notice shall be deemed to have been given and received: (i) if by hand delivery, upon receipted delivery; (ii) if by mail, three (3) calendar days after the date first deposited in the United States mail; (iii) if by overnight courier, on the date shown on the courier's receipt as the date of actual delivery, and (iv) if by facsimile, on the date shown on the confirmation of transmission. A party may change its address by giving written notice to the other party as specified herein.

15.2 Survival; Rights not Affected by Knowledge. All representations, warranties, covenants, and obligations in this Agreement and any Grant Request, Schedule, certificate or document delivered pursuant to this Agreement will survive the execution of this Agreement. All of the covenants in Section 9 hereof, unless otherwise stated therein, shall remain in effect for the term of this Agreement. The right to any remedies granted in this Agreement will not be affected by any investigation conducted, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement, with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant, or obligation.

15.3 No Implied Waiver. No party shall be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by the party sought to be charged, and then only to the extent specifically set forth therein. A waiver shall not be construed as an amendment of this Agreement and a waiver in one event

shall not be construed as continuing or as a waiver of or bar to such right or remedy on a subsequent event.

15.4 Partial Invalidity. The invalidity or unenforceability of any one or more provisions of this Agreement shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

15.5 Binding Effect. The covenants, conditions, and agreements contained in this Agreement shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns.

15.6 Modifications. Scripps and Funding may supplement, extend, modify or terminate this Agreement by an instrument in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought; provided, however, that a supplement, extension, modification or termination of this Agreement shall only be enforceable against Funding if it has been approved by the affirmative vote of not less than seven of the nine members of the board of directors of Funding.

15.7 Governing Law. This Agreement shall be governed by, and construed in accordance with, the substantive laws of the State of Florida without regard to conflict of laws principles.

15.8 No Assignment. The Grant may not be assigned by Scripps without the prior written consent of Funding, and any purported or attempted assignment without such consent shall be void and of no force or effect; provided however that Scripps may assign this Agreement to any successor in interest to all or substantially all of Scripps assets, provided that such successor assumes all rights and obligations hereunder, including rights and obligations under the Security Agreement. Funding may assign this Agreement to OTTED, if Funding has defaulted under the OTTED Agreement, and upon Funding's dissolution, OTTED shall be the successor in interest to Funding under this Agreement without any action being required of Funding. The parties acknowledge and agree that in the event this Agreement is assigned by Funding to OTTED, OTTED shall assume any and all rights and obligations of Funding hereunder, including rights and obligations under the Security Agreement.

15.9 Counterparts. This Agreement may be executed in any number of counterparts by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

15.10 No Partnership. Nothing contained herein shall be deemed to create an equity investment on the part of Funding in Scripps, or a partnership or joint venture of the parties.

15.11 Arbitration. Any controversy or claim arising out of or relating to this Agreement, or any alleged breach hereof, shall be finally determined by a panel of three (3) arbitrators, which determination shall be binding on the parties. One of the arbitrators will be selected by Funding, one arbitrator will be selected by Scripps, and the third will be selected by

the two arbitrators selected by the parties. The terms of this Section 15.11 will become operative upon notice of intent to arbitrate ("Notice") being given by one party to the other party. If either party does not notify the other party of the identity of its selection within one (1) month after being given the Notice, then the other party may seek to have the position filled by applying to the American Arbitration Association to make the selection. The site of the arbitration, unless the parties agree otherwise, shall be in Palm Beach County, Florida. The proceedings before the arbitrators shall be governed by the Commercial Arbitration Rules of the American Arbitration Association, and, for situations in which these Rules are silent or impossible to apply, such rules of procedure as determined by the arbitrators. In addition to arbitral relief, pre-arbitration attachment of assets, injunction or order of specific performance may be sought in, and granted by, a court of competent jurisdiction. A party seeking pre-arbitration attachment or injunction from a court shall not be considered to have waived its right to seek arbitration. Any party failing to pay its share of any deposits or fees required by the third arbitrator or the American Arbitration Association, and any party which fails to be represented at any arbitration proceeding, may, in the arbitrators' discretion, have a judgment of default entered against it. Judgment upon any binding award rendered by the arbitrators may be entered by any court having jurisdiction thereof, or application may be made to such court for a judicial acceptance of the award and an order of enforcement, as the case may be. **THE PARTIES ACKNOWLEDGE THAT BY AGREEING TO ARBITRATION THEY HAVE IRREVOCABLY WAIVED ANY RIGHT THEY MAY HAVE TO A JURY TRIAL WITH RESPECT TO ANY DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT.**

15.12 Entire Agreement. This Agreement, including the exhibits and schedules hereto, constitutes the entire agreement between Funding and Scripps with respect to the subject matter hereof, and supersedes all prior and contemporaneous agreements, representations, and understandings of the parties. No party hereto shall be liable or bound to the other in any manner by any warranties, representations or covenants with respect to the subject matter hereof except as specifically set forth herein.

15.13 Third Parties. Nothing in this Agreement, express or implied, is intended to confer upon any party, other than the parties hereto and, solely with respect to the Reinvestment payments, the Biomedical Fund and their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided herein or in the Schedules or Exhibits hereto.

15.14 Titles and Subtitles; Form of Pronouns; Construction and Definitions. The titles of the sections and paragraphs of this Agreement are for convenience only and are not to be considered in construing this Agreement. All pronouns used in this Agreement shall be deemed to include masculine, feminine and neuter forms, the singular number includes the plural and the plural number includes the singular. Unless otherwise specified, references to an Article or Articles are to an Article or Articles in this Agreement. Unless the context otherwise requires, the term "including" shall mean "including, without limitation."

15.15 Costs. Each of Scripps and Funding shall bear its own costs (including legal and accounting fees) in connection with the negotiation and preparation of this Agreement.

15.16 Force Majeure. Notwithstanding any other terms contained in this Agreement, if Scripps is prevented from achieving the Disbursement Conditions set forth in Schedule “4.4(c)” by the dates set forth therein due to its inability to occupy its permanent Florida facility within two years after entering into the memorandum of agreement pursuant to Section 403.973, Florida Statutes, as a result of permitting delays or related administrative or judicial proceedings, acts of God, labor disturbances, or other similar events beyond the control of Scripps (each, a “Force Majeure Event”), then all of the dates set forth in Schedule “4.4(c)” shall be extended by the number of days by which Scripps was delayed in commencing its occupancy of its permanent Florida facility. In no event shall the extension be for more than four (4) years. Upon the occurrence of a Force Majeure Event, Funding shall continue to fund Scripps at a level that permits it to sustain its then-current level of operations until the Force Majeure Event ceases and Scripps is able to resume the timetable set forth in Schedule “4.4(c),” as adjusted based on the force majeure event.

IN WITNESS WHEREOF, the undersigned have executed this Operating and Funding Agreement as of the day set forth on the first page of this Agreement.

THE SCRIPPS RESEARCH INSTITUTE, a
California nonprofit public benefit corporation

By: _____
Name: Dr. Richard Lerner
Title: President

By: _____
Name: The Hon. Alice D. Sullivan (Ret.)
Title: Chair of the Board

SCRIPPS FLORIDA FUNDING CORPORATION,
a Florida not-for-profit corporation

By: _____
Name: Marshall M. Criser, Jr.
Title: Chairman

The execution of the foregoing Agreement is hereby approved.

OFFICE OF TOURISM, TRADE AND
ECONOMIC DEVELOPMENT

By: _____
Name: Pamela J. Dana
Title: Director

Schedule 1	Business Plan
Schedule 4.2(a)	Quarterly Disbursements
Schedule 4.2(b)	Proposed Disbursements
Schedule 4.4(c)	Disbursement Conditions
Schedule 6.1	Affiliates
Exhibit A	Security Agreement
Exhibit B	Form of Grant Request
Exhibit C	Form of Legal Opinion
Exhibit D	Form of Annual Science Report
Exhibit E	Monitoring Checklist