

## Materials Transfer Agreement

Name \_\_\_\_\_ Title \_\_\_\_\_

Institution \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Dear Dr. \_\_\_\_\_:

St. Jude Children's Research Hospital, Inc., ("St. Jude") agrees to provide Dr. \_\_\_\_\_ and the \_\_\_\_\_ (collectively referred to herein as "Recipient") with materials developed at St. Jude by Dr. \_\_\_\_\_. Before receiving the materials, we ask that you agree to the following terms and conditions:

1. The biological materials to be provided to Recipient are \_\_\_\_\_, including any progeny, portions, unmodified derivatives and any accompanying know-how or data ("Materials"). The Recipient acknowledges that the Materials are or may be the subject of a patent application. Except as provided in this Agreement, no express or implied licenses or other rights are provided to the Recipient under any patents, patent applications, trade secrets or other proprietary rights of St. Jude, including any altered forms of the Materials made by St. Jude.
2. The Materials will be used exclusively for nonclinical, non-commercial research by Recipient, and will not be used in humans and will not be used in any process used to make a product intended for use in humans. Use will be in compliance with all Federal, State and local laws and regulations. This agreement may be terminated upon thirty (30) days written notice by either party to the other. Upon termination of the agreement, Recipient shall destroy all unused Materials.
3. The Materials will not be transferred, distributed or released to any third party unless prior written permission is obtained from St. Jude. The Materials may not be taken or sent to another institution without written permission from St. Jude. The Materials may not be provided to a commercial entity, and may not be used in research that is subject to consulting, a first option right to negotiate a license or other licensing obligations to another party (other than those obligations imposed upon grantee institutions of the U.S. government) without express written consent by St. Jude. Recipient, its affiliates, agents and subcontractors agree to comply with all U.S. export control laws, rules and regulations with respect to its use and any permitted distribution of the Materials.
4. The Recipient agrees to use the Materials in compliance with all applicable statutes and regulations, and specifically agrees to adhere to all requirements necessary for maintaining patient confidentiality associated with the Materials.
5. Recipient agrees to provide St. Jude with a copy of any publication that contains experimental results obtained from the use of the Materials, and will acknowledge St. Jude as the source of the Materials.
6. Recipient acknowledges that St. Jude is a "Covered Entity" as that term is defined by the Health Insurance Portability and Accountability Act of 1996 (codified at 42 U.S.C. 1320d-1329d-8; 42 U.S.C. 1320-d) ("HIPAA") and regulations promulgated thereunder codified at 45 CFR Parts 160, 162 and 164 et seq ("HIPAA Regulations").

7. To the extent that any Material is accompanied by or associated with individually identifiable health information or protected health information as defined by HIPAA and HIPAA Regulations (including 45 C.F.R. §160.103), the Recipient agrees to: (a) execute whatever agreements are necessary for the permitted use and/or disclosure of such individually identifiable Material or protected health information, including a Data Use Agreement, in a form consistent with 45 C.F.R. §164.514(e)(4) that shall be attached hereto and incorporated herein; or (b) to use and/or disclose such individually identifiable Material or protected health information consistent with individual Authorization(s) or Waiver of Authorization(s) obtained in accordance with HIPAA Regulations including an IRB-approved informed consent document with the Authorization form is combined with an informed consent consistent with HHS regulations at 45 CFR part 46 and/or FDA regulations at 21 CFR parts 50 and 56; or (c) if St. Jude assigns and retains a code or other means of record identification which links the individually identifiable health information or protected health information and the code will be disclosed to the Recipient, then the code will not be derived from or related to information about the individual human subject nor can it be translated to identify the individual human subject. St. Jude will not use, disclose or release the code for other purposes or disclose the mechanism for re-identification to the Recipient nor will the Recipient have access to link the code to the individually identifiable health information or protected health information. In addition, the Recipient agrees to execute a St. Jude Specimen/Data Release Form.
  
8. Recipient shall not commercialize any product that contains Materials without the prior written approval of St. Jude. The Recipient is free to file patent application(s) claiming inventions made by Recipient through use of the Materials but agrees to notify St. Jude within sixty (60) days of filing any patent application which claims subject matter that contains or incorporates the Materials or which claims a method of manufacture or use of the Materials.
  
9. The Materials provided are experimental in nature, and are provided WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE. St. Jude MAKES NO REPRESENTATION AND PROVIDES NO WARRANTY THAT THE USE OF THE MATERIALS WILL NOT INFRINGE ANY PATENT OR OTHER PROPRIETARY RIGHT. IN NO EVENT SHALL ST. JUDE BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
  
10. Except to the extent prohibited by law, the Recipient assumes all liability for damages that may arise from its use, storage or disposal of the Materials. St. Jude and the American Lebanese Syrian Associated Charities (ALSAC) and their respective corporate affiliates and Boards of Governors, Directors, officers, staff, representatives and agents will not be liable to the Recipient for any damages, expenses (including without limitation legal expenses), losses, claims, demands, suit or other actions (collectively hereinafter "Claims") made by the Recipient, or made against the Recipient by any other party, due to or arising from the Materials by the Recipient, except to the extent such Claims are solely caused by the gross negligence or willful misconduct of St. Jude.

If the terms and conditions set forth above are acceptable, please return one copy to Esther Allay in the Office of Technology Licensing after it has been signed by you and by an authorized official of your institution, and retain the other copy for your files. The Materials will be forwarded to you upon receipt of the signed letter.

Sincerely,

J. Scott Elmer  
 Director  
 Office of Technology Licensing

\_\_\_\_\_  
 Recipient Scientist

\_\_\_\_\_  
 Institution Official

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Name

\_\_\_\_\_  
 Title

\_\_\_\_\_  
 Date