



**Terms and Conditions of Use Statement
For Material Requested From
The Fred Hutchinson Cancer Research Center
IHWG Cell and Gene Bank**

Commercial Entity

By accepting the MATERIAL (as defined below) the RECIPIENT agrees to the following terms and conditions:

RECIPIENT means the institution that requested and is receiving MATERIAL from the Fred Hutchinson Cancer Research Center IHWG Cell and Gene Bank.

MATERIAL means the genomic DNA listed in Exhibit 1, attached hereto and incorporated herein in its entirety, and received by RECIPIENT from the Fred Hutchinson Cancer Research Center IHWG Cell and Gene Bank ("FHCRC"), any and all progeny, clones, including unmodified derivatives of those genomic DNA and any modifications which are based on or incorporate an element of the original genomic DNA.

The RECIPIENT agrees that it shall use the MATERIAL for product development purposes only. The MATERIAL shall not be sold or used for any commercial service.

THIS MATERIAL IS NOT FOR USE IN HUMAN SUBJECTS, INCLUDING FOR PURPOSES OF DIAGNOSTIC TESTING.

The RECIPIENT agrees to acknowledge the Fred Hutchinson Cancer Research Center IHWG Cell and Gene Bank in any presentations and publications reporting use of the MATERIAL.

The RECIPIENT agrees to use the MATERIAL in compliance with all applicable statutes and regulations

ANY MATERIAL DELIVERED PURSUANT TO THIS AGREEMENT IS UNDERSTOOD TO BE EXPERIMENTAL IN NATURE. FHCRC MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OR CONDITIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MATERIAL, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, THE ABSENCE OF LATENT OR OTHER DEFECTS, WHETHER OR NOT DISCOVERABLE, THE VALIDITY OF ANY PATENT RIGHTS RELATING TO THE MATERIAL OR ITS USE OR PRODUCTION, NONINFRINGEMENT OF THE INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, OR ADEQUACY OF RELEASE TESTING TO VERIFY SUITABILITY OF THE MATERIAL FOR ANY PARTICULAR USE.

ANY LIABILITY OF FHCRC TO RECIPIENT RELATING TO THE MANUFACTURE, SHIPMENT OR USE OF THE MATERIAL, SHALL BE LIMITED TO THE TOTAL PRICE PAID FOR THE MATERIAL BY RECIPIENT. IN NO EVENT SHALL FHCRC BE LIABLE TO RECIPIENT OR ANY OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS OR REVENUE, WHETHER ARISING IN CONTRACT OR TORT, EVEN IF FHCRC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. RECIPIENT ACKNOWLEDGES AND AGREES THAT THE MATERIAL IS MADE AVAILABLE BY FHCRC AT A VERY LOW COST TO SUPPORT NON-COMMERCIAL RESEARCH AND EDUCATION AND THAT WITHOUT THIS LIMITATION OF LIABILITY AND THE INDEMNIFICATION RIGHTS HEREIN, FHCRC WOULD NOT BE ABLE TO MAKE THEM AVAILABLE ON THESE TERMS.

RECIPIENT will be fully responsible and liable for all pre-clinical, clinical, or other uses and applications of the MATERIAL by RECIPIENT. To the extent permitted by applicable law, RECIPIENT agrees to hold harmless and defend FHCRC and its respective agents and employees, and their successors heir and assigns ("Indemnitees") from and against any liability, claims, damages or expenses, including attorneys fees, resulting from, arising out of or in any way relating to RECIPIENT'S use of the MATERIAL or any related product (INCLUDING, WITHOUT LIMITATION, THOSE RESULTING FROM, ARISING OUT OF OR RELATING TO THE NEGLIGENT ACTS OR OMISSIONS OF THE INDEMNITEES); provided, that RECIPIENT shall not be required to indemnify the Indemnitees for to the extent any liability, claim, damage or expense results from, arises out of or relates to the gross negligence, recklessness, or willful misconduct of FHCRC.

Title and risk of loss shall pass to RECIPIENT upon transfer to such common carrier. RECIPIENT will promptly pay FHCRC for the MATERIAL and all shipping costs as provided in the submitted invoice.

Acceptance of the MATERIAL by the RECIPIENT shall be deemed agreement to these Terms & Conditions of Use.