

The BioBrick™ Public Agreement

DRAFT Version 1

October 2009

For public distribution and comment

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The BioBrick™ Contributor Agreement

DRAFT Version 1 (October 2009)

The “Materials” are the particular standardized genetic material and associated functional information described as follows: _____

[Please include BioBrick part number(s), if appropriate. Contributor may list as many different parts as Materials as Contributor wishes.]

The “Contributor” is (name, address, contact information): _____

Applicable BioBrick™ Standard(s): _____

Attribution to the Contributor: Should Users attribute the Materials to the Contributor when the Materials are commercialized or otherwise distributed? __ Yes __ No

Describe attribution (if any): _____

Background

The BioBricks Foundation, Inc. (the “Foundation”) was established to foster and advance innovation, research, standardization and education in synthetic biology through the open design, construction, distribution, understanding, and use of BioBrick™ compatible parts, namely standardized genetic material and associated functional information in ways that benefit the world. The Foundation believes that a consistent system of agreements for distributing and making use of engineered genetic materials serves these goals. Some such materials may be subject to patents; most will not be. In order to afford many people the freedom to responsibly pursue biotechnology, some provisions in this Agreement deal with patents. These patent-related provisions may or may not apply to the Materials or to Contributor (both as defined above).

By attaching the BioBrick™ Contributor Agreement (the “Contributor Agreement”) with the Materials Contributor is providing, Contributor agrees to the terms of this Contributor Agreement.

1. Representation. Contributor represents and warrants that Contributor has the right to enter this Contributor Agreement as a Contributor, by virtue of Contributor’s own work or by that of the company, institution, or other entity on whose behalf Contributor is authorized to act.

2. BioBrick™ Identification Tag. Contributor agrees that the Materials may be modified to include a BioBrick™ identification tag.

3. Rights and Non-Assertion. If any portion of the Materials (including but not limited to a nucleic acid sequence within the Materials), or any compositions containing the Materials, and/or any uses of the Materials are covered by any patents, patent applications, or other proprietary rights belonging to the Contributor, the Contributor agrees not to assert or threaten to assert such patents; not to threaten assertion of any rights that may be granted through issuance of a patent application; not to invite to license; and not to enforce any other proprietary rights in the Materials as provided in any manner against or otherwise adverse to either the Foundation or any person or entity who uses the Materials under a BioBrick™ User Agreement (a “User”).

4. Patent Disclosure. By filling in the patent information below Contributor is representing and warranting that the Materials contributed under this Contributor Agreement, a portion thereof, including but not limited to a nucleic acid sequence within the Materials, a composition containing the Materials, or a use of the Materials may be covered by an issued patent, pending application, or planned patent filing. Or, by writing “none” in the patent information box below Contributor is representing that, to the best of Contributor’s knowledge, there are no issued patents, currently pending patent applications, or planned patent filings, copyright, or data rights that cover the Materials contributed under this Contributor Agreement (including but not limited to a nucleic acid sequence within the Materials) or that cover any composition containing the Materials or their use, whether the issued patents, pending applications, or planned patent filings are owned by the Contributor or another party:

<u>Patent No. or Application No.</u>

This Contributor Agreement covers only the Materials described herein and no others unless specifically covered by a new Contributor Agreement.

5. Attribution.

(a) Users of the Materials who commercialize or otherwise distribute the Materials are asked to agree to attribute their use of the Materials under the BioBrick™ Public Agreement by conspicuously including the [**Provided under the BioBrick™ Public Agreements logo**] in packaging or product inserts, publications, and grant-related materials for embodiments of the Materials and their modifications. In order to ensure the quality and integrity of the Foundation’s activities, the Foundation has the rights to that logo and all goodwill derived from its use.

(b) If Contributor requests attribution Users will be required to use reasonable efforts to attribute the Materials to the Contributor, as noted.

6. Protocols. The Contributor is encouraged to ensure that the Materials provided under this Contributor Agreement are compatible with one or more of the BioBrick™ protocols and standards and that any applicable standards are so noted. Contributors and Users are, however, in no way restricted from adopting any other protocol or standard.

7. Applicable Laws. The Contributor is obligated to comply with laws and regulations applicable to the Materials, including laws and regulations governing export control and safety. Because laws and regulations vary around the world and change frequently, the Foundation cannot advise the Contributor concerning compliance with any applicable laws or regulations. The existence of this Contributor Agreement does not indicate that the contribution, other distribution, or use of the Materials is permitted by applicable law.

8. Fees and Other Undertakings. The Contributor understands that no fees will be charged by the Contributor or the Foundation to a User for providing access to, or rights in, the Materials. However, appropriate and nominal fees may be charged to the User for the manufacture and shipping of the Materials and additional fees may be charged for additional services or consulting requested by a User. Further, nothing in this Contributor Agreement shall preclude Contributor from voluntarily entering into a separate agreement with a User or another party regarding the Materials that may vary from or supersede the terms of this Contributor Agreement or the User Agreement. Any such separate agreement, however, shall not diminish the rights of any other User in the Materials as provided under this Contributor Agreement.

9. Warranties and Representations. The Contributor provides no representations or warranties of any kind in the Materials, implied or express, except the promises of authority in Paragraph 1 and of non-assertion as described above in Paragraph 3.

10. Interpretation of this Contributor Agreement. This Contributor Agreement shall be interpreted under the laws of the Commonwealth of Massachusetts and the United States of America.

11. Applicability. This Contributor Agreement is binding upon the Contributor and its, her, or his heirs, successors, administrators, and assigns.

The BioBrick™ User Agreement

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The BioBricks Foundation, Inc. (the “Foundation”) was established to foster and advance innovation, research, standardization, and education in synthetic biology through the open design, construction, distribution, understanding, and use of BioBrick™ compatible parts, namely standardized genetic material and functional information (the “Materials”), in ways that benefit the world. The Foundation believes that a consistent system of agreements for distributing synthetic genetic materials serves these goals.

1. Representation. By receiving Materials via one or more Contributors under this User Agreement, User (meaning either the User personally or the company, institution, other entity on whose behalf User is authorized to act) agrees to the terms of this Contributor Agreement and shall therefore have the right to use the Materials insofar as the Materials are within the public domain or the Contributors have promised not to assert any of the Contributors’ proprietary rights against the User by way of the applicable Contributor Agreements. This User Agreement applies to all Materials that User may receive via one or more Contributors under their BioBricks Contributor Agreements.

2. Use of the Materials.

(a) The User acknowledges that, upon submission of the Materials, the Contributors are asked to agree that, if the Materials, any portion of the Materials, including but not limited to a nucleic acid sequence within the Materials, any compositions containing the Materials, and/or any uses of the Materials are covered by any patents, patent applications, or other proprietary rights belonging to the Contributors, the Contributors will not assert or threaten to assert such patents; will not threaten assertion of any rights that may be granted through issuance of a patent application, will not send the User an invitation to license or otherwise; and will not enforce any other proprietary rights in the Materials in any manner against either the Foundation or a User. This User Agreement and the applicable Contributor agreements are specifically limited to the Materials described in the particular Contributor Agreements.

(b) The User acknowledges that, upon submission of the Materials, the Contributors are asked to indicate whether, to the best of the Contributors’ knowledge, there are any issued patents or currently pending patent applications that cover the Materials, that cover any portion of the Materials (including but not limited to a nucleic acid sequence within the Materials) that cover any composition containing the Materials or their use.

(c) The User acknowledges having read and understood the applicable BioBrick™ Contributor Agreement(s) relating to the Materials (the “Contributor Agreement(s)”).

(d) The User is encouraged to ensure that the Materials provided under this User Agreement are compatible with one or more of the BioBrick™ protocols and standards and that any applicable standards are so noted. Users and Contributors are in no way restricted from adopting any other protocol or standard.

4. Attribution.

(a) The User agrees not to remove or alter any BioBrick™ identification tag included in the Materials.

(b) If Contributor has requested attribution of Contributor's name under the Contributor Agreement that applies to the Materials, User will use reasonable efforts to attribute the Contributor as specified in the Contributor Agreement.

(c) The User agrees that if the User commercializes or otherwise distributes the Materials in either their original form or a modified form, the User will attribute the use of the BioBrick Public Agreements by using reasonable efforts to conspicuously include the [**Provided under BioBrick™ Public Agreements**] logo in all packaging or product inserts, publications, and grant-related materials. In order to ensure the quality and integrity of the Foundation's activities, the Foundation owns that logo and all goodwill derived from its use.

5. Applicable Laws. The User is obliged to comply with laws and regulations applicable with respect to use of the Materials, including laws and regulations governing export control and safety. The User will also respect the valid property rights of others in the Materials and determine if User's use of the Materials violates any intellectual property rights. Because laws and regulations vary around the world and change frequently, the Foundation cannot advise the User concerning compliance with any applicable laws or regulations. The existence of this User Agreement does not indicate that the contribution, other distribution, or use of the Materials is permitted by applicable law.

6. No Harmful Uses. The User will refrain from using the Materials in connection with any intentionally harmful or unsafe uses.

7. Fees and Other Agreements. The User understands that no fees will be charged for providing access to or use of the Materials. However, appropriate and nominal fees may be charged to the User for the manufacture and shipping of the Materials and additional fees may be charged for additional services or consulting requested by the User. Further, nothing in this User Agreement shall preclude the User and any Contributors from voluntarily entering into a separate agreement with the User or another party regarding the Materials that may vary from or supersede the terms of this User Agreement or the Contributor Agreement. Any such separate agreement, however, shall not diminish the rights of any other user in the Materials as provided under this User Agreement.

8. No Warranty. NEITHER THE CONTRIBUTOR, THE FOUNDATION, ANY REPOSITORY OR MANUFACTURER, NOR ANY OTHER PARTY MAKES ANY WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED, WITH RESPECT TO THE MATERIALS, WHICH ARE PROVIDED "AS IS" EXCEPT WHERE SPECIFICALLY PROVIDED UNDER THE BIOBRICK CONTRIBUTOR AGREEMENT. ALL OTHER WARRANTIES ARE EXPRESSLY EXCLUDED AND DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING BY STATUTE OR OTHERWISE IN LAW

OR FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USE OF TRADE. ANY STATEMENTS OR REPRESENTATIONS MADE BY ANY OTHER PERSON OR ENTITY ARE VOID. THE USER ASSUMES ALL RISK AS TO THE QUALITY, FUNCTION, AND PERFORMANCE OF THE MATERIALS AND ALL RISK FOR ANY CONSEQUENCE OF USING, COMMERCIALIZING, OR REDISTRIBUTING THE MATERIALS.

9. Limitation of Liability. IN NO EVENT WILL THE CONTRIBUTORS, THE FOUNDATION, OR ANY OTHER PARTY WHO HAS BEEN INVOLVED IN THE DESIGN, CONSTRUCTION, PRODUCTION, DISTRIBUTION, OR ANY OTHER ACTIVITY INVOLVING THE MATERIALS BE LIABLE TO THE USER OR ANY OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, RELIANCE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF DATA OR PROFITS, OR FOR INABILITY TO USE THE MATERIALS, EVEN IF THE CONTRIBUTORS, THE FOUNDATION, OR SUCH OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10. Interpretation of this User Agreement. This User Agreement shall be interpreted under the laws of the Commonwealth of Massachusetts and the United States of America.

11. Applicability. This User Agreement is binding upon the User and its, her, or his heirs, successors, administrators, and assigns.