

Prototype Agreement

Since you would like to use the Mozilla Brand Kit to create a Prototype device, Mozilla is willing to grant you a limited license to use the Mozilla Brand Kit to develop and test your Prototype and submit it to Mozilla on the terms and conditions set forth in this Prototype Agreement.

For clarity, this Prototype Agreement does NOT let you promote you or your products using Powered by Firefox OS Brand Assets or distribute any devices that are branded with Powered by Firefox OS Brand Assets.

1.ACCEPTANCE; AGREEMENT MODIFICATIONS

- 1.1.In order to use the Powered by Firefox OS Brand Assets as described herein, you must first agree to this Agreement. You are not permitted to use the Powered by Firefox OS Brand Assets if you do not agree to this Agreement.
- 1.2.Mozilla may change the terms of this Agreement from time to time by posting a change notice, by issuing a Mozilla Prototype Evaluation Program Letter to you, by posting a revised agreement on the Mozilla website or by sending notice of such modification to you by email to the email address then-currently associated with your account (any such change by email will be effective on the date specified in such email). Use of Firefox OS Brand Assets on a Prototype after our publication of any such changes shall constitute your acceptance of this Agreement as modified.

2.DEFINITIONS

- 2.1."**Agreement**" means this Prototype Agreement and each Mozilla Prototype Evaluation Program Letter issued to you by Mozilla.
- 2.2. "**Brand Kit**" means the documentation and materials containing specific Powered by Firefox OS Brand Assets and how to use them, which are available at <http://firefoxosbrand.com/pdf>.
- 2.3."**B2G**" means Mozilla's Boot2Gecko open source operating system.
- 2.4."**Firefox Marketplace**" means Mozilla's online marketplace that allows registered developers in certain countries to distribute applications, services and content to customers for use on the Prototype. If you choose to integrate the Firefox Marketplace onto your Prototype, the Firefox Marketplace user experience and functionality will be available through the Firefox Marketplace application preinstalled by you on the Prototype.
- 2.5."**Mozilla**" means the Mozilla Corporation, a California corporation with offices at 331 E. Evelyn Avenue, Mountain View, CA 94041, United States of America.
- 2.6."**Mozilla Brand Certification Process**" means the certification process to which you will submit your Prototype. The Mozilla Brand Certification Process may consist of several steps, including the Open Web Device Compliance Review Board.
- 2.7."**Mozilla Indemnified Parties**" means Mozilla and its directors, parents, subsidiaries, affiliates, officers, employees, independent contractors and agents.
- 2.8."**Mozilla Marks**" means any trademark, trade name, application for trademark registration, service mark, application for service mark registration, domain

name, registration and application for registration relating to the same, a strapline or slogan, trade dress or look and feel or component, licensed, owned or controlled by Mozilla.

- 2.9. **"Mozilla Prototype Evaluation Program Letter"** means a Mozilla issued prototype evaluation letter notifying you that your Prototype is compliant and that you may exercise the rights in this Agreement.
- 2.10. **"Powered by Firefox OS Brand Assets"** means the brand assets as described in the Brand Kit. For clarity, the Powered by Firefox OS Brand Assets do not include the Firefox "globe" or "fox" logos. The Powered by Firefox OS Brand Assets contain Mozilla Marks.
- 2.11. **"Powered by Firefox OS Branding Requirements"** means the requirements described in Exhibit A that your Prototype device must meet before you can submit it for approval through the Mozilla Brand Certification Process.
- 2.12. **"Prototype"** means a prototype device running B2G that you have created, in compliance with the Powered by Firefox OS Branding Requirements, for submission to the Mozilla Brand Certification Process.
- 2.13. **"Start Date"** is the date identified in your Mozilla Prototype Evaluation Program Letter.

3. LICENSES

3.1. Open Source Code. B2G is made available to the public under the Mozilla Public License (MPL) and other open source licenses that are compatible with the MPL. You can find more information about B2G's open source licenses by visiting here: <https://wiki.Mozilla.org/Boot2Gecko/Licensing>. Use of the Mozilla Brand Features and/or Mozilla Marks are not licensed under the MPL.

3.2. Trademark License for Prototypes. The Brand Kit contains the Powered by Firefox OS Brand Assets and describes how to use them in conjunction with your Prototype. Mozilla hereby grants you a limited, revocable, non-exclusive license to use the Powered by Firefox OS Brand Assets for the sole purpose of developing a Prototype in preparation of submitting such Prototype for approval through the Mozilla Brand Certification Process. ***You may not use the Powered by Firefox OS Brand Asset for any other purpose, including, but not limited to promotion of your entity, your Prototype or any relationship with Mozilla or distribution of a device using any Powered by Firefox OS Brand Assets.***

4. MOZILLA MARKS. You acknowledge Mozilla's rights in the Mozilla Marks and agree that any use of Mozilla Marks by you shall inure to the sole benefit of Mozilla. You agree not to (a) challenge Mozilla's ownership or use of; (b) register; or (c) infringe any Mozilla Marks, nor shall you incorporate any Mozilla Marks into your trademarks, service marks, names, Internet addresses, domain names, or any other similar designations. Regardless of the foregoing, should you acquire any rights in any Mozilla Marks by operation of law or otherwise, you will immediately and at no expense to Mozilla assign the rights to Mozilla along with any associated goodwill, applications, and/or registrations.

5.YOUR REPRESENTATIONS AND WARRANTIES. You hereby represent and warrant that:

5.1.Your Prototype does not infringe any third party's intellectual property, privacy, publicity or other proprietary rights; and

5.2.You and your Prototype will comply with all applicable laws.

6.NO WARRANTIES BY MOZILLA. B2G, THE BRAND KIT, THE MOZILLA BRAND CERTIFICATION PROCESS, THE POWERED BY FIREFOX OS BRAND ASSETS AND OTHER INFORMATION IS DELIVERED BY MOZILLA "AS IS" AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, AND NONINFRINGEMENT, ARE HEREBY DISCLAIMED BY MOZILLA.

7.INDEMNIFICATION. You agree to indemnify and hold harmless, and upon Mozilla's request, defend, each Mozilla Indemnified Party from any and all claims, losses, liabilities, damages, taxes, expenses and costs, including without limitation, attorneys' fees and court costs (collectively, "**Losses**"), incurred by a Mozilla and arising from or related to any of the following: (i) your breach of any certification, covenant, obligation, representation or warranty in this Agreement; (ii) any claims that your Prototype (whether alone or as an essential part of a combination) violates or infringes any third party intellectual property or proprietary rights; (iii) your use of Mozilla Marks; or (iv) development and distribution of any Prototype.

8.NO CRITICAL USE. B2G is not intended for use in the development of products in which errors or inaccuracies or the failure of the product, could lead to death, personal injury, or severe physical, economic or environmental damage. To the extent permitted by law, you hereby agree to indemnify, defend and hold harmless each Mozilla Indemnified Party from any Losses incurred by such Mozilla Indemnified Party by reason of any such use.

9.LIMITATION OF LIABILITY. IN NO EVENT WILL THE MOZILLA INDEMNIFIED PARTIES BE LIABLE TO THE YOU FOR THE YOUR SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES REGARDLESS OF WHETHER MOZILLA WAS MADE AWARE OF THE POSSIBILITY OF SUCH DAMAGES. Except as otherwise may be required by law, in no event shall Mozilla's total liability to you under this Agreement for all damages in the aggregate exceed the amount of ten dollars (\$10.00).

10.Term and Termination. This Agreement commences on the Start Date and ends on the End Date (see your Letter).

10.1.**For Convenience.** Either party may terminate this Agreement for convenience, for any or no reason, effective 30 days after providing the other party written notice of its intent to terminate.

10.2.**By Mozilla.** Mozilla may terminate this agreement immediately upon notice to you if:

10.2.1.you breach this Agreement or make any unauthorized use of the Brand Kit, Powered by Firefox OS Brand Assets or Mozilla Marks;

10.2.2.You commence an action alleging patent or other IPR infringement against the Mozilla Indemnified Parties or Mozilla's community of volunteers.

10.2.3. You become insolvent, dissolve or cease to do business, file for bankruptcy, or have filed against you a petition in bankruptcy.

10.3. **Effect of Termination.** Upon the termination of this Agreement for any reason, you agree to immediately cease all use of the Brand Kit and Powered by Firefox OS Brand Asset. Sections 3-9 and 11 as applicable shall survive any termination or expiration of this Agreement for any reason.

11. **GENERAL.**

11.1. **Force Majeure.** Neither party shall be liable for any delay or failure in performance hereunder caused by acts of God or other causes beyond the parties control and without fault or negligence of such party, if the party gives prompt notice and makes all reasonable efforts to perform.

11.2. **Relationship of Parties.** The parties are independent contractors under this Agreement and no other relationship is intended, including a partnership, franchise, agency, joint venture, master/servant or employer/employee relationship. Neither party will act in a manner which expresses or implies a relationship other than that of independent contractor, nor bind the other party.

11.3. **No Publicity.** Neither party shall publicize or disclose the existence, or terms and conditions, of this Agreement, or any transactions hereunder, without the express, prior written consent of the other party.

11.4. **Import and Export Licenses.** B2G and related technologies may be subject to U.S. export control laws and may be subject to export or import regulations in other countries. You agree to comply with all such laws and regulations and it is your responsibility to obtain such licenses to export, re-export, or import as may be required after receipt of B2G and related technologies.

11.5. **Waiver or Delay.** A waiver of any provision of this Agreement, or a delay by either party in the enforcement of any right hereunder, will neither be construed as a continuing waiver, nor create an expectation of non-enforcement, of that or any other provision or right.

11.6. **Assignment.** The rights, duties and obligations of either party under this Agreement may not be assigned by you in whole or in part by operation of law or otherwise without the prior express written consent of Mozilla, and any attempted assignment of any rights, duties or obligations hereunder without such consent shall be null and void. Mozilla may freely assign this Agreement. This Agreement shall be binding on the parties and their respective successors and permitted assigns.

11.7. **Governing Law; Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding conflict of law rules and principles. The United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded and shall not apply. This Agreement is prepared, executed and will be interpreted in English only.

Any dispute arising out of or connected with this Agreement shall be subject to the sole and exclusive jurisdiction of the California courts, or if you are located

or headquartered in: (a) Asia, resolved by arbitration in Hong Kong pursuant to the Hong Kong International Arbitration Centre ("**HKIAC**") Administered Arbitration Rules ("**Rules**") in force when the Notice of Arbitration is received by the HKIAC; or (b) outside the U.S. and not in Asia, administered by the International Centre for Dispute Resolution in accordance with its International Arbitration Rules in New York, New York. Any such arbitration shall be conducted in English by three arbitrators. Nothing contained in this Section shall preclude either party from seeking or obtaining preliminary injunctive relief pending resolution of the dispute in issue. Each party acknowledges that any actual or threatened breach of this Agreement may constitute immediate, irreparable harm to the other party for which monetary damages would be an inadequate remedy, and that injunctive relief may be an appropriate remedy for such breach. Accordingly, in the event of any breach of this Agreement, the non-breaching party may seek immediate injunctive relief without the necessity of posting bonds.

- 11.8.**Invalidity.** If any provision, or part thereof, in this Agreement, is held to be invalid, void or illegal, it shall be severed from the Agreement, and shall not affect, impair, or invalidate any other provision, or part thereof, and it shall be replaced by a provision which comes closest to such severed provision, or part thereof, in language and intent, without being invalid, void or illegal.
- 11.9.**Entire Agreement.** This Agreement constitutes the entire agreement between you and Mozilla relating to the subject matter hereof and supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to its subject matter. This Agreement may be modified only: (a) by a written amendment signed by both parties, or (b) to the extent expressly permitted by this Agreement (for example, by Mozilla through email notice to you).
- 11.10.**Governing Language.** In the event of a dispute between the English and any non-English version of this Agreement, the English version of this Agreement shall govern. Les parties ont exigé que le présent contrat et tous les documents connexes soient rédigés en anglais.

Exhibit A

Powered by Firefox OS Branding Requirements

This document contains obligations you must meet in order to use the Powered by Firefox OS Brand Assets in conjunction with your Prototype. The names “Mozilla”, “Firefox” and “Firefox OS” identifies Mozilla’s brand and represents Mozilla’s values and ideals. This document may be updated from time to time by Mozilla to reflect current requirements.

| | Powered by: Firefox OS |
|---|---|
| Brand Assets available | Brand assets available: “Powered by Firefox OS” tier as described in the Brand Kit. |
| Your use cases | Prototypes that meet minimum compatibility requirements |
| Requirements | Prototypes must pass the following requirements: * Open Source License Compliance * Pass the Open Web Device Compliance Review Board * Meet Performance and Compatibility Requirements |
| Firefox Marketplace and Mozilla services | Firefox Marketplace and other Mozilla Services available. |

1. **Definitions.**

- a. “**APIs**” are application programming interfaces that allow other programs, such as web apps, to interact with a given program.
- b. “**Open Web Device Compliance Review Board**” or “**OWDCRB**” means a third party entity created by Mozilla and other third parties to encourage API compatibility and performance baselines for Prototypes.
- c. “**Mozilla Contact**” means the Mozilla contact identified in your Mozilla Prototype Evaluation Program Letter, or such other contact Mozilla may designate from time to time.
- d. “**Web APIs**” are APIs in the operating system that are exposed for access by a web application and does not include private internal facing APIs not exposed for access by a web application.

2. **Branding Tiers.**

- a. “**Powered by Firefox OS**”
 - i. You may create a Prototype bearing the “Powered By Firefox OS” tier of branding described in the Brand Kit.

- ii. Should you wish to use the “Powered by Firefox OS” brand tier, you must adhere to the following requirements:
 - A. Open Source License Compliance (requirements below)
 - B. Performance and Web Compatibility Requirements (see below)
- iii. You must follow the Review and Approval Processes for “Powered by Firefox OS” described in Section 5 of this Exhibit A.
- iv. Once you have met the requirements above, you may use the applicable branding for the “Powered by Firefox OS” tier in the manner described in the Brand Kit. **NOTE:** You may ONLY use the assets detailed under “Powered by Firefox OS” tier in the Firefox OS Brand Identity Guidelines for a Prototype meeting this tier of branding and not any other Mozilla Marks or brand assets.

3. Open Source License Compliance. Your distribution of any open source object or source code must comply with the requirements for each of the open source licenses governing that code. There is more information about the open source in Boot2Gecko available at <https://wiki.mozilla.org/Boot2Gecko/Licensing>. Mozilla strongly recommends you getting involved in and consider making open source contributions back to the Boot 2 Gecko project. To find out more about how to get involved, please see the following resources:

- a. <https://developer.mozilla.org/en-US/docs/Introduction>
- b. https://developer.mozilla.org/en-US/docs/Mozilla/Firefox_OS
- c. http://mozilla.github.io/process-releases/draft/development_overview
- d. <https://wiki.mozilla.org/B2G/Architecture>
- e. <https://wiki.mozilla.org/WebAPI>

4. Platform Compatibility and Performance. Should you wish to create a Prototype, it must adhere to the following requirements:

- a. *Open Web Device Compliance Review Board*. Mozilla, along with operators, chipset manufacturers and other third parties have created the Open Web Device Compliance Review Board to encourage web API compatibility and performance baselines for devices. The OWDCRB is slated to fully launch in Q3 of 2014. Once the OWDCRB is launched, in order to create Prototypes using either tier, each Device must first pass the OWDCRB. There are limited exceptions to this requirement that Mozilla may grant in its sole discretion (such as if there are no performance metrics for the type of device you are creating) and you should contact the Mozilla Contact if you believe a Branded Device may qualify for such an exception. You can learn more and start the OWDCRB process by visiting <https://www.openwebdevice.org>.
- b. *Minimum Hardware Requirements*. All Prototypes must meet the following minimum hardware and software requirements:
 - i. **Mobile phones** (for “Firefox OS 1.x”):
 - 1. CPU: Minimum 1GHz, single-core, equivalent to ARM Cortex A5 processor

2. Storage: 256MB
 3. System RAM: 128MB
 4. Display: 262k color, 3.5-inch HVGA (480x320) capacitive multi-touch display (minimum two points)
 5. GPU: WebGL-capable GPU capable of rendering H.264 video at 30FPS
 6. Hardware Buttons: Home, Power, Volume up, Volume down. Back, Menu, and Search hardware buttons may NOT be present on a Firefox OS Co-branded.
- ii. **Other devices:** Requirements for other devices are to be approved by Mozilla in writing.
- c. Web API Compatibility
- i. Requirement: Because cross compatibility of Firefox OS is critical to the success of the platform, without obtaining prior written approval from Mozilla, you shall not add, remove or modify any default functionality regarding the compatibility of web sites and web applications in Prototypes. Mozilla welcomes innovation across the open source Firefox OS platform. If you see a need to add, remove or modify Web APIs, you will reach out to your Mozilla Contact to discuss alternatives or work with Mozilla to standardize such changes in a mutually acceptable way.
 - ii. Clarifications: The following are further clarifications regarding the foregoing requirement:
 1. Unless approved in writing by Mozilla (including via email), you shall not add, remove or modify any APIs found in files in Prototypes which are exposed to web content, including certified, privileged or regular apps and general web pages. For example:
 - i. You shall not modify APIs declared in files with "idl" or "webidl" extensions.
 - ii. You shall not add, remove, or modify HTML elements and their attributes, other Web languages such as SVG and MathML, CSS properties, application manifests, permissions, and any other similar functionality available to web pages and applications.
 2. You shall not modify the default user agent string and shall ensure the Gecko user agent string is accurate to the appropriate version of Gecko. More information may be found here:
 - i. https://wiki.mozilla.org/B2G/User_Agent/OEM_Changes_Policy
 - ii. https://developer.mozilla.org/en-US/docs/Gecko_user_agent_string_reference

3. You shall not modify the behavior of existing Web APIs. For example, you shall not change the semantics of a function or its side effects.
 4. You shall not remove any functionality found in existing Web APIs (such as removing media formats, HTML elements, DOM properties or methods, etc.) or any Web APIs themselves.
- d. Ongoing Compatibility Through Updates. You shall ensure that the Prototype is provided with the following update requirements for a period of at least **1 year** (or longer if required by applicable law) from the first launch date of each device:

Mozilla will release source code for upgrades and updates, including any security fixes, according to the release schedule and process it generally uses for software development. For each such update or upgrade, you will comply with the update testing, certification and deployment schedule set forth in Appendix 1 below. All updates will be made available by Mozilla in source code form and you will complete all builds into executable form. For any update deployed by you, you will give end users notice and choice over whether to accept such update, including without limitation by the end user enabling default updating. This requirement shall survive any termination or expiration of the Agreement.

- e. Compatibility Through not Modifying Permission Architecture or Data Management Features. You will not make modifications to the Prototype in such a way that any security or data management feature (or their respective default configurations) are changed, including:
- i. The Prototype must implement the permission model and trust levels documented here:
 1. https://developer.mozilla.org/en-US/docs/Mozilla/Firefox_OS/Security/Security_model
 2. https://developer.mozilla.org/en-US/docs/Mozilla/Firefox_OS/Security/System_security
 - ii. The Prototype must gate access to Web APIs by appropriate permission checks. Current permissions checks are documented here:
 1. https://developer.mozilla.org/en-US/docs/Web/Apps/App_permissions
 - iii. Applications that are pre-installed on a Prototype that are derived from the Firefox Marketplace should ship with the app signing certificate provided for Firefox Marketplace and pre-installed applications that do not derive from the Firefox Marketplace must not use the Firefox Marketplace signing certificate.
 - iv. You must not modify the operation of the following features in the Prototype:
 1. Do Not Track flag
 2. The user-controlled clearing of application data (including, without limitation, for any pre-installed applications)

3. The default operation of any Mozilla Services integrated into the Prototypes (such as update data pings and crash reporting).
- v. You will not introduce any spyware or malware into the Prototype. Additionally, you will not use other means, without an end user's consent, for you or any third parties to access a user's personal information.
- vi. You will not make any modifications to the Prototype that would cause the Firefox OS privacy policy (available at <http://www.mozilla.org/en-US/privacy/policies/firefox-os/>) or the Firefox Marketplace Privacy Policy (available at <https://marketplace.firefox.com/privacy-policy>), in each case as modified from time to time, to no longer be accurate.

5. Review Process; Audit.

- i. *Of Devices/Builds.*
 1. When available, you shall complete the OWDCRB certification process (available at <https://www.openwebdevice.org>).
 2. You shall complete the Powered by Firefox OS Self Certification Checklist (to be made available here at: <http://www.mozilla.org/firefoxos/certification>) and shall submit such checklist along with a sample of the Prototype being together with mocks of final packaging to the address specified by Mozilla.
- ii. *Of Marketing.* Mozilla provides the Brand Kit for the Prototype by the "Powered by Firefox OS" level of branding ("**Firefox OS Brand Toolkit**"). You may only use such assets provided under the Firefox OS Brand Toolkit in the manner described therein **with no modifications**. For clarity, nothing in the Firefox OS Co-branded Brand Toolkit described below may be used. Questions regarding the Firefox OS Brand Toolkit may be directed to the Mozilla Contact.
- iii. *Audit.* Mozilla shall have the right to audit your compliance with this Exhibit A. Mozilla shall advise you of any non-conformity with these Firefox OS Brand Requirements, and you will promptly update the Prototype to resolve such non-conformity. Mozilla has the right to take all action that it deems necessary to ensure that your activities under and uses of the Mozilla Marks are consistent with the reputation for quality and prestige of products bearing the Mozilla Marks, including any quality standards.

Appendix 1: Updates Schedule

| <u>Type</u> | <u>Release Frequency (Mozilla)</u> | <u>Your Push Commitment</u> |
|--|---|--|
| Urgent Maintenance Update (Urgent, isolated security or product fix) | On an as-needed basis | As soon as possible, estimated to be no more than 2 weeks after code change made available that you need to have tested, certified and deployed to users |
| Security Update (important security fixes) | Releases made available every 6 weeks | At least once every 90 days, with regular 90 day cadence |
| OS Update (New features, bug fixes, security fixes) | Releases made available approximately once every 6 months | Deployed to users <180 days from when the update becomes available |

- Mozilla will maintain Firefox OS repositories with major/critical security and usability fixes, along with any partner-required features.
- Mozilla will make source code available to you.
- You will perform all builds and updates and engage in appropriate testing and certification for such builds.
- Mozilla will provide Security Update patches available for the previous two OS Updates to you.
- You agree to test/certify the full set of security bug fixes for each Security Update that is deployed.
- Mozilla will converge a Firefox OS version 1.X build every 6 weeks, and bump the version number at that time.
- Mozilla will notify you as soon as Mozilla is aware of an Urgent Maintenance update, and will inform you so that they can follow along with the investigation/fix.
- You acknowledge that if there is an update available at phone launch, they will pick up security/stability/usability/partner-feature change accumulated during the device launch gap and agree to generate and deploy such update within 2 weeks of launch.
- Urgent Maintenance updates will be indicated by incrementing the 3rd digit of the version number of the most recent release branch. When you take only that change on top of your last released version should increment the 4th digit of your version number.