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# MOBI Intellectual Property Rights Policy

## Version 1.1

This Intellectual Property Rights (IPR) Policy governs the treatment of intellectual property in the production of deliverables by MOBI. This Policy applies to all MOBI members and members of the public participating in MOBI (collectively “Members”).

### 1. Copyright license to Contributions.

a. *Contributors and Contributions.* MOBI coordinates the development of various deliverables, such as technical specifications, software code, white papers, marketing collateral, and other related material. Any work of authorship intentionally provided to MOBI for potential inclusion in a draft or final MOBI deliverable is a “Contribution.” The entity or individual making the Contribution is the “Contributor.”

b. *Copyright license to Contributions.* Each Contributor grants MOBI a worldwide, irrevocable, non-exclusive, royalty-free, fully sublicensable license to reproduce, distribute, display, perform, and create derivative works of the Contributions.

c. *MOBI copyrights.* Subject to the Contributor’s continued copyright ownership in their Contributions, MOBI will own the copyright in any collective works, compilations, joint works, or derivative works created in connection with MOBI activities, and will own the copyright in any works created by MOBI employees or agents.

d. *Attribution; moral rights.* Each Contributor, and each individual, making a Contribution, waives any moral rights (or similar rights related to attribution or control) to the maximum extent permitted by applicable law. MOBI deliverables will be attributed to MOBI.

### 2. Patent license obligations for Specifications.

a. *Specifications.* MOBI produces technical specifications that define requirements and related information and data models necessary to facilitate interoperability between third-party products or services. Once approved as final via a process defined by the MOBI Board of Directors (the “Board”), these are “Specifications.” Every Member may license certain patent claims in connection with Specifications, as described in Section 2.

b. *License obligation.* Each Member participating in a MOBI activity agrees that if a patent claim that is owned, controlled, or licensable by that Member becomes a Necessary Claim, then the Member may, at the Member’s discretion, provide disclosure and notice to MOBI of its intention to opt-in a patent claim, pursuant to Sections 2(d) and 2(e), and grant a RAND-Z License to any other Member implementing the relevant Specification who requests such a license, subject to the definitions and exceptions described below.

i. A “Necessary Claim” is any claim in a patent in any jurisdiction that would necessarily be infringed by a compliant implementation of the relevant Specification. A claim is necessarily infringed only when it is impossible to avoid infringing it because there is no commercially reasonable non-infringing alternative for implementing the normative portions of the Specification. All other claims, even if contained in the same

patent as Necessary Claims, are not Necessary Claims unless they qualify individually as Necessary Claims. Claims that would be infringed only by portions of an implementation that are not expressly specified in the normative portions of the Specification are not Necessary Claims.

ii. A “RAND-Z License” is a worldwide, non-exclusive license, limited to Necessary Claims, to make, have made, use, import, offer to sell, lease, sell, promote, and otherwise distribute the portions of the implementer’s products and services that include compliant implementations of the Specification, granted on royalty-free and otherwise reasonable and non-discriminatory terms.

c. *Reciprocity; defensive suspension.* No Member shall be obligated to license any party if that party does not agree to make patent licenses available for all MOBI Specifications in accordance with this Policy. Further, except as otherwise expressly agreed between parties, a licensor may suspend any license granted to a particular licensee pursuant to this Policy if that licensee initiates litigation against the licensor that alleges infringement of a Necessary Claim in connection with any MOBI Specification. A party will not be deemed to have initiated litigation if that party files a suit that is defensive based on a patent infringement claim or suit by another party.

d. *Opt-in.* An individual Member, participating in a MOBI activity, that reasonably believes that he or she, or the member on whose behalf such individual is acting, owns or controls patent rights, that predate the release of the MOBI Specification, that include Necessary Claims relating to such draft Specification, and intends to opt-in, shall give notice to MOBI of its intention to opt-in a patent claim as soon as reasonably possible within the review period. Patent claims are for Member’s patents at the time of the Specification draft. Patent claims later arising from any pending continuations, divisionals, continuation-in-part, extensions, reissues, reexamination, or reviews (including, for example, *inter partes* reviews, covered business method reviews, and post-grant reviews) or similar proceedings of such patents, any patents claiming priority to or through such, opt-in patent claims, Patents and/or substitution Patents, as well as any and all foreign counterparts of any of the foregoing would also require notice to MOBI of the Member’s intent to opt-in. For the avoidance of doubt, a Member grants no license to any patent rights it controls or owns, either outright or through an Affiliate, other than by the opt-in process described below.

i. Notification. A Member may opt-in a claim by providing a written notification to the Board that specifically identifies a particular claim and describes the member’s reasonable basis for believing the claim would be a Necessary Claim (including citations to the applicable portion of the relevant draft specification), at any time prior to final approval of a Specification. The Member should make such opt-in notification promptly upon becoming aware that the claim potentially may be a Necessary Claim and deciding that the Member is willing to license it under reasonable terms to be agreed upon by the Member and the Board. Members acknowledge that opt-ins made late in the Specification development process are highly disruptive to the process and potentially costly to MOBI and other Members; accordingly, Members agree in the strictest of good faith to identify such claims as soon as reasonably possible. Without the opt-in as set forth in this section, no ownership transfer results from the provision of or participation in MOBI or this Agreement, including without limitation any interest in any methods, materials, technologies, approaches, concepts, work product, and/or other know-how arising out of or related to MOBI’s processes or activities.

ii. ‘RAND’ option. A Member may, at its discretion, communicate its willingness to license its opted-in claim in accordance with Section 2(b) in all respects except for the royalty-free obligation—i.e., the Member can commit to license on reasonable and non-discriminatory but potentially royalty-bearing (“RAND”) terms. Further, such Member may optionally include a not-to-exceed license fee or rate commitment, a sample license agreement, or one or more material licensing terms. If the identified claim ultimately becomes a Necessary Claim, the member will be bound by the communicated terms.

iii. Review period. The Board will provide notice and a substantially complete draft version of each Specification to all Members for review no less than 60 days prior to formal approval of the Specification.



e. *Disclosure.* Disclosure under this Section is based on an individual participating Member's own actual and personal knowledge, and no knowledge of a Member on whose behalf such Individual is acting regarding patent information will be imputed to such Individual. No Individual will be under any affirmative duty to investigate the existence of patent claims or Necessary Claims of which he or she is not currently personally aware. Any Member participating in the work of MOBI, in the Member's discretion, may draw the attention of MOBI to any known patent or to any known pending patent application, either their own or of other organizations, although MOBI is unable to verify the validity of any such information.

f. *Contents of Disclosure.* The following minimum information shall be provided in connection with any disclosure of Necessary Claims identified by an Individual.

i. With respect to issued patents, disclosure must include the identity of the patent rights holder and/or applicant and the patent number or application number of the patent rights.

ii. In the event a patent claim has been disclosed that may be essential, but is not available under the licensing requirements, a MOBI committee will be launched to discuss.

iii. For the avoidance of doubt, MOBI is not in a position to give authoritative or comprehensive information about evidence, validity, or scope of patents or similar rights, but it is desirable that the fullest available information should be disclosed. Therefore, any member participating in the work of MOBI may, at the Member's discretion, from the outset, draw the attention of MOBI to any known patent or to any known pending patent application, either their own or of other organizations, although MOBI is unable to verify the validity of any such information. MOBI is under no affirmative duty to perform a patent search or any analysis of the relationship between the patents that a member organization holds and the specification in question.

g. *Effect of withdrawal from MOBI.* Even after the date a Member formally withdraws from MOBI (the "Withdrawal Date"), the former Member will be obligated to grant licenses as described in this Section 2 to (a) those claims that were opted-in by the Member and became Necessary Claims for existing Specifications approved prior to the Withdrawal Date, (b) Necessary Claims that read on future versions of a Specification, limited to those portions of the future version that are substantially the same as in the Specification as it was approved prior to the Withdrawal Date, and (c) Necessary Claims in any patent filed by the former Member after the Withdrawal Date if such claims have a priority date that is during the period when the former Member was a Member and were opted in, limited to those Specifications in final form before the Withdrawal Date. Otherwise, no new obligations are attached post Withdrawal Date.

h. *License obligations are binding on successors and assignees.* For Members, the opt-in to license Necessary Claims of a patent claim is an encumbrance that is binding upon any and all assignees and transferees of any Necessary Claims. Members agree to (a) notify its assignee or transferee of such obligation; and (b) require its assignee or transferee to agree to similarly provide such notice to its assignees or transferees of this obligation. Further, a Member should take other reasonable actions, as and if appropriate for the Members' legal jurisdiction, to ensure that direct and subsequent assignees and transferees are bound by the license obligations imposed by this Policy. The obligation to license will be binding on all successors-in-interest irrespective of whether notice or other action has occurred, however.

**3. Software.** If any software is to be developed by MOBI and the Member(s), MOBI and the member(s) shall cooperate to execute a separate agreement regarding the ownership of and any licenses of intellectual property.

**4. Trademarks.**

a. MOBI will be permitted to use the name and corporate logo (or similar mark) of MOBI members solely on the MOBI website and solely in connection with communications about MOBI membership, subject to the limitations in the MOBI Participation Agreement and section 4b below, or the reasonable use limitations



communicated by the member to MOBI. MOBI members may use the MOBI name and membership logo solely to communicate their membership in MOBI, subject to a reasonable trademark use policy to be published by the Board. The MOBI name and trademarks may not be used to communicate compliance or conformance with any MOBI specifications or technology, and may not otherwise be used in connection with any MOBI member product or service, except as permitted by an applicable written MOBI license agreement or Board-approved policy. A party granting a trademark license under this Section 4 will be entitled to terminate such license if it reasonably believes that the licensee is misusing the licensor's mark

b. MOBI shall not, without the express written consent of Members in each instance: (i) use the name, trademarks, trade dress, or trade names of a member, or its Affiliates, in any advertising, publicity, promotions, or other materials; (ii) disclose the existence of or terms of this Agreement to any third party other than its legal or financial advisors under a duty of confidentiality, except if such disclosure is in compliance with the confidentiality obligations of this Agreement or as may be required in order to enforce this Agreement in a court of competent jurisdiction; (iii) represent that any Product, Service, Software or Deliverable provided hereunder has been used, approved or endorsed by the member or its Affiliates. Written consent for the forgoing uses may only be granted by a MOBI member's designated representative and may be revoked by a MOBI member in its sole discretion at any time. In the event consent is granted, MOBI shall follow all member trademark and branding usage guidelines, as amended from time to time, and any other usage restrictions imposed by the member. This section (b) does not apply to MOBI Affiliate members as defined in MOBI Participation Agreement.

c. MOBI will own all rights, titles, and interests in any trademarks created expressly for the benefit of MOBI in the course of MOBI activities regardless of the level of contributions of any individual members participating in the development thereof. Each Member hereby assigns to MOBI all rights, titles, and interests in and to any such Trademarks, including any copyright rights such Member may have in any graphical elements of such trademarks. Each Member will execute such documents and provide such other assistance to the extent reasonably necessary to effect, perfect, or confirm MOBI's ownership rights under this Section.

**5. Confidentiality.** Except as otherwise approved in writing by the Board, all non-public draft and final MOBI deliverables will be deemed confidential information of MOBI. Members may discuss this information among MOBI members, but will otherwise maintain this information in confidence with at least a reasonable degree of care. Information disclosed in connection with MOBI activities is otherwise non-confidential, except as otherwise expressly agreed by information recipients. The Board will establish processes to determine the timing and nature of any public release of deliverables. Materials released publicly are non-confidential.

**6. Scope; amendments; authority.**

a. *Applies to past and future MOBI activities.* The obligations of a licensor under this Policy apply to the entire period of their membership, both before and after the effective date of this Policy.

b. *Assent to terms: members.* Participation in MOBI as a Member indicates assent to the terms of the Policy. Any party that desires to not be bound by the terms of this IPR Policy must abstain from joining or must withdraw from membership if already a member as of the date of this policy, and must not engage in MOBI activities.

c. *Application and assent to terms: non-members.* If a non-member receives actual or constructive notice of these terms and participates in the development of any MOBI deliverable, the act of participation indicates assent to the terms of this Policy. All rights and obligations applicable to members under this Policy will apply equally to the participating non-member, except the obligations imposed by Section 2 will apply only if and when the non-member participates in the development of a Specification (e.g. by participating in an applicable working group, joining a working group mailing list, making a Contribution to a draft Specification, etc.). The date the non-member ceases participation in MOBI will be that party's Withdrawal Date under Section 2(e).



d. *Amendments.* The MOBI Board of Directors may amend this Policy at any time in its sole discretion. No amendment to this Policy will be effective in less than 60 calendar days from the date that written notice of such amendment is sent to members. Within 60 calendar days of receiving written notice, members may withdraw from membership without being bound by the new terms within the amended Policy.

e. *Authority.* Individuals acting within the scope of their employment or otherwise as an agent of a legal entity act on behalf of their employer or other legal entity. The individual represents that they have the right and authority to bind their employer or other principal to these terms. The bound entity represents and warrants that it has the right to grant the licenses described in these terms.

7. **Limitation of Liability.** In no event will MOBI, any party hereto, or any other participant of MOBI be liable to any other party to a participant of MOBI for the licensability of any necessary claim, the cost of procuring substitute goods or services, lost profits, loss of use, loss of data or any incidental, consequential, indirect, or special damages of any party including third parties, whether under contract, tort, warranty or otherwise, arising in any way out of this or any other related agreement, whether or not such party had advance notice of the possibility of such damages.
8. **Governing Law.** This Policy shall be construed and controlled by the laws of the State of California without reference to conflict of laws principles. Participants agree to accept personal jurisdiction in the State and Federal courts of California.
9. **No Warranty.** All parties acknowledge that all information provided as part of any Specification development process and any draft or final Specification are all provided “as is” with no warranties whatsoever, whether express, implied, statutory, or otherwise, and the parties expressly disclaim any warranty of merchantability, noninfringement, fitness for any particular purpose, or any warranty, otherwise arising out of any proposal, specification, or sample.
10. **Reciprocal inter-insurance exchange limitation.** MOBI understands that for members that are a reciprocal inter-insurance exchange, MOBI agrees that no personal liability shall extend to any officer, director, member, agent, or employee of said member. MOBI shall look solely to the assets of that member for satisfaction of this Agreement.

