

Twitch SDK License Agreement

The Twitch SDK License Agreement (“Agreement”) is entered into on _____, 2014 (the “Effective Date”) by and between Twitch Interactive, Inc. (“Twitch”), a Delaware corporation, with offices at 225 Bush St, Fl 6, San Francisco, CA 94104 (“Twitch”), and _____, a _____ corporation, with offices at _____ (“Developer”).

“Developer”.

1. Definitions

- 1.1. “Authorized Purpose” means the scope of Developer’s permitted use of the Twitch SDK, which is solely for purposes of the real-time encoding and live transmission to the Twitch Service of End User video game play involving the Developer Content. For the avoidance of doubt, the Authorized Purpose expressly excludes (i) saving, storing, copying and archiving any content encoded with the Twitch SDK, and (ii) the transmission of any such content to any property other than the Twitch Service.
- 1.2. “Developer Content” means the video games set forth on Exhibit A hereto, as such exhibit may be amended by the parties, as well as any other video games into which Developer incorporates the Twitch SDK.
- 1.3. “End Users” means individual users of the Developer Content.
- 1.4. “Twitch Service” means Twitch’s hosted video streaming platform, currently located at www.twitch.tv, as well as any online features, services, applications (including mobile apps and apps for third party platforms) and/or other programs expressly made available by Twitch to Developer.
- 1.5. “Twitch SDK” means Twitch’s software development kit and any other software that may be provided by Twitch to Developer with the software development kit (including any updates to the foregoing).

2. Licenses; Restrictions

- 2.1. Twitch SDK License. During the term of this Agreement, Twitch hereby grants Developer a worldwide, non-transferable (except for a permitted assignment of this Agreement), non-exclusive, royalty-free license to: (a) install and integrate the Twitch SDK in object code form only within the Developer Content (“Bundled Product”) solely for the Authorized Purpose; and (b) enable End Users to create and broadcast Developer Content to the Twitch Service utilizing the Bundled Product, provided that such End Users’ access and use of the Twitch Service will be subject to registration for an account on the Twitch Service and acceptance of and compliance with the Twitch Service terms of service and privacy policy.
- 2.2. Developer Content License. Developer hereby grants to Twitch a worldwide, non-transferable (except for a permitted assignment of this Agreement), non-exclusive, perpetual, irrevocable, royalty-free license to reproduce, distribute, publicly display, publicly perform, modify and create derivative works of any Developer Content made available by End Users to the Twitch Service during the term of the Agreement utilizing the Bundled Product for the Authorized Purpose.
- 2.3. License Restrictions. Developer has no rights or licenses with respect to the Twitch SDK or any materials created, developed or provided by Twitch in connection with this Agreement (collectively, the “Twitch Materials”) except as expressly provided in this Agreement. Without limiting the generality of the foregoing, except as expressly provided in this Agreement, Developer may not: (a) copy, distribute, rent, lease, lend, sublicense, transfer or make the Twitch SDK or Twitch Materials available to any third party or use the Twitch Materials on a service bureau basis; (b) decompile, reverse engineer, or disassemble the Twitch SDK or Twitch Materials; (c) modify, translate or create derivative works based on the Twitch SDK or Twitch Materials; (d) modify, remove, or obscure any copyright, trademark, patent or other notices or legends that appear on or

within the Twitch SDK or Twitch Materials, or (e) use the Twitch SDK or Twitch Materials in any manner other than for the Authorized Purpose.

- 2.4. Twitch Account. End User access to and use of the Twitch Service shall be governed by Twitch's terms of service and privacy policy, and any other agreement required by Twitch of the End User in order to utilize the Twitch Service. Twitch shall own all End User information it obtains directly from such End User in connection with such End User's interaction with the Twitch Service.

3. Trademark Rights.

- 3.1. Twitch Mark License. Twitch hereby grants to Developer a worldwide, non-transferable (except for a permitted assignment of this Agreement), non-exclusive, royalty-free license during the term of this Agreement, to use, publicly display and perform, reproduce and distribute the trademarks, including logos, used for the Twitch Service that are provided to Developer by Twitch (the "Twitch Marks") solely in connection with the Authorized Purpose. Developer will not adopt, use, or attempt to register any trademarks, domain names, service marks, trade names and the like that are or may be confusingly similar to the Twitch Marks or in such a way as to create combination marks with the Twitch Marks.
- 3.2. Quality Control. Developer shall refrain from any modification of the Twitch Marks, removal of any proprietary notices or legends therefrom, and shall ensure that all use of the Twitch Marks shall be in accordance with Twitch's trademark usage guidelines as may be provided or made available by Twitch to Developer from time to time, and Twitch shall have a right to review and approve the appearance of the Twitch Marks as used by Developer in accordance with the terms of this Agreement. All goodwill arising from the use of the Twitch Marks shall inure to the benefit of Twitch.

4. Ownership

- 4.1. Twitch Rights. As between Twitch and Developer, Twitch retains all right, title and interest in and to: (a) the Twitch Service, the Twitch SDK, the Twitch Marks and the Twitch Materials; (b) all modifications to the Twitch Service, the Twitch SDK, the Twitch Marks and the Twitch Materials; (c) all derivative works of the Twitch Service, the Twitch SDK, the Twitch Marks and the Twitch Materials; and (d) any and all patents, copyrights, moral rights, trademarks, trade secrets and any other form of intellectual property rights recognized in any jurisdiction (collectively, "Intellectual Property Rights") embodied in (a) – (c). All rights not expressly granted by Twitch to Developer herein are hereby reserved by Twitch.
- 4.2. Developer Rights. Subject to Section 4.1, as between Developer and Twitch, Developer retains all right, title and interest in and to: (a) the Developer Content; (b) all modifications to the Developer Content; (c) all derivative works of the Developer Content; and (d) any and all Intellectual Property Rights embodied in (a) – (c). All rights not expressly granted by Developer to Twitch herein are hereby reserved by Developer.
5. Support. Twitch shall have no obligation under this Agreement to provide any upgrades, patches, enhancements, fixes or any other support for the Twitch SDK, the Twitch Service or the Twitch Materials. Twitch may make maintenance and support services available under a separate agreement.
6. Term and Termination.
- 6.1. Term. This Agreement is effective until terminated.
- 6.2. Termination by Twitch. Twitch may terminate this Agreement at any time by providing thirty (30) days' notice to Developer. Additionally, Twitch may terminate this Agreement and the licenses granted herein immediately if Developer breaches any provision of this Agreement.
- 6.3. Termination by Developer. Developer may terminate this Agreement at any time upon written notice to Twitch. Upon any such termination, all applicable licenses granted herein shall terminate, and Developer must cease all

use of the Twitch Service and Twitch Materials, and destroy or remove from all hard drives, networks, and other storage media all copies of the Twitch Materials.

- 6.4. Effect of Termination. Sections 1, 2.3, 2.4, 3.2, 4, 6.4, and 7 through 11 shall survive any expiration or termination of this Agreement.

7. Confidentiality

- 7.1. Definition. “Confidential Information” means any and all information disclosed by Twitch to Developer, either directly or indirectly, in writing, orally or by inspection of tangible objects, including without limitation the Twitch SDK, the features and functionality of the Twitch Service and the results and performance of the Twitch Materials. Confidential Information does not include information that: (i) is or becomes generally known to the public through no fault of or breach of this Agreement by Developer; (ii) is rightfully known by Developer at the time of disclosure without an obligation of confidentiality; or (iii) Developer rightfully obtains from a third party without restriction on use or disclosure.

- 7.2. Use and Disclosure Restrictions. Developer shall not use the Confidential Information except as necessary to exercise its rights or perform its obligations under this Agreement. Developer shall not disclose the Confidential Information to any third party except to those of its employees, subcontractors, and advisers that need to know such Confidential Information for the purposes of this Agreement, provided that each such employee and subcontractor is subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective of Confidential Information as those set forth herein. Developer will use at least the efforts Developer ordinarily uses with respect to its own proprietary information of similar nature and importance to maintain the confidentiality of all Confidential Information in its possession or control, but in no event less than reasonable efforts. The foregoing obligations will not restrict Developer from disclosing Confidential Information pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that Developer gives reasonable notice to Twitch to contest such order or requirement.

8. Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TWITCH DOES NOT MAKE ANY WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, AND TWITCH EXPRESSLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, AND ANY IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR PERFORMANCE. TWITCH AND ITS SUPPLIERS, LICENSORS, AND PARTNERS DO NOT WARRANT THAT THE TWITCH SERVICE OR TWITCH SDK WILL BE CORRECT, UNINTERRUPTED OR ERROR-FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE TWITCH SERVICE OR TWITCH SDK ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. TWITCH DOES NOT WARRANT THE RESULTS OF USE OF THE TWITCH SERVICE OR TWITCH SDK. DEVELOPER ACKNOWLEDGES THAT TWITCH MAY MODIFY OR SUSPEND THE TWITCH SERVICE AT ANY TIME IN ITS SOLE DISCRETION AND WITHOUT NOTICE.
9. Indemnification. Developer agrees to indemnify, defend, and hold harmless Twitch and its directors, officers, and employees from and against any liabilities, damages, costs and expenses (including reasonable attorneys’ fees) arising out of any losses, costs, claims, demands, actions, or proceedings initiated by a third party to the extent attributable to: (a) the Developer Content infringing or misappropriating the patent, copyright, trade secret, trademark or other intellectual or proprietary rights of such third party; or (b) the alleged or actual breach of Developer’s the terms set forth in this Agreement, provided that Twitch: (i) promptly notifies Developer in writing of the claim, except that any failure to provide this notice promptly only relieves Developer of its responsibility pursuant to this Section 9 to the extent its defense is materially prejudiced by the delay; (ii) grants Developer sole control of the defense and/or settlement of the claim; and (iii) provides Developer, at Developer’s expense, with all assistance, information and authority reasonably required for the defense and/or settlement of the claim, but in a manner consistent with Twitch’s respective confidentiality obligations and preservation of attorney/client, work product, and other privileges.
10. Limitation of Liability. TWITCH SHALL NOT BE LIABLE TO DEVELOPER FOR ANY PUNITIVE, INCIDENTAL, INDIRECT, SPECIAL, RELIANCE OR CONSEQUENTIAL DAMAGES, INCLUDING LOST BUSINESS, REVENUE, OR ANTICIPATED PROFITS, WHETHER BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND WHETHER OR NOT TWITCH WAS ADVISED OF THE

POSSIBILITY OF SUCH LOSS OR DAMAGES. IN NO EVENT WILL TWITCH'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED ONE HUNDRED DOLLARS (\$100). THE PARTIES AGREE THAT THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE.

11. General

- 11.1. Relationship of the Parties. The parties are independent contractors with respect to each other. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture among the parties hereto, or an employee-employer relationship. No party shall have any right to obligate or bind any other party in any manner whatsoever, and nothing herein contained shall give, or is intended to give, any rights of any kind to any third parties.
- 11.2. Assignment. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party, except that Twitch may assign its rights and obligations under this Agreement without the consent of the other party in connection with any merger (by operation of law or otherwise), consolidation, reorganization, change in control or sale of all or substantially all of its assets related to this Agreement or similar transaction. This Agreement inures to the benefit of and shall be binding on the parties' permitted assignees, transferees and successors.
- 11.3. Force Majeure. Neither party will be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, internet or telecommunications failures, shortages of or inability to obtain labor, energy, or supplies, war, terrorism, riot, acts of God or governmental action, acts by hackers or other malicious third parties and problems with the Internet generally, and such performance shall be excused to the extent that it is prevented or delayed by reason of any of the foregoing.
- 11.4. Headings and Wording. Unless otherwise expressly stated in this Agreement, the words "herein," "hereof," "hereto," and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section, Subsection, or other subdivision. The words "include" and "including" are not and should not be construed or interpreted as terms of limitation. The words "day," "month," and "year" mean, respectively, calendar day, calendar month, and calendar year. Section headings are for reference purposes only, and should not be used in the interpretation hereof. No provision of this Agreement will be construed against either party as the drafter thereof.
- 11.5. Notices. All notices under the terms of this Agreement shall be given in writing and sent by registered mail, internationally recognized carrier, or facsimile transmission with machine confirmation or shall be delivered by hand.
- 11.6. Amendments. An amendment of this Agreement shall be binding upon the parties so long as it is either in writing and executed by both parties or is presented by Twitch electronically via the Twitch Service and accepted by Developer by clicking on "I Accept" or similar language.
- 11.7. Waiver. A waiver of any provision of this Agreement will only be valid if provided in writing and will only be applicable to the specific incident and occurrence so waived. The failure by either party to insist upon the strict performance of this Agreement, or to exercise any term hereof, will not act as a waiver of any right, promise or term, which will continue in full force and effect.
- 11.8. Construction. This Agreement shall be fairly interpreted and construed in accordance with its terms and without strict interpretation or construction in favor of or against either party.
- 11.9. Severability. If any provision, or portion thereof, of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, such determination will not impair or affect the validity, legality, or enforceability of the remaining provisions of this Agreement, and each provision, or portion thereof, is hereby declared to be separate, severable, and distinct.

- 11.10. Governing Law; Jurisdiction. This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, without reference to conflicts of laws principles. The parties agree that the federal and state courts in San Francisco County, California will have exclusive jurisdiction and venue under this Agreement, and the parties hereby agree to submit to such jurisdiction exclusively.
- 11.11. Entire Agreement. This Agreement, together with the Exhibits attached hereto and hereby incorporated herein by reference, constitutes the complete, final and exclusive agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior or contemporaneous oral or written representations, understandings, agreements or communications between them concerning the subject matter hereof. Neither party is relying upon any warranties, representations, assurances or inducements not expressly set forth herein.

Addresses and Contacts:

Twitch Interactive, Inc.

Attention: Twitch Contracts
Address: 225 Bush St, Fl 6
San Francisco, CA 94104
Phone: +1.415.808.0802
Email: Legal@Twitch

Company

Attention: _____
Address: _____

Phone: _____
Fax: _____
Email: _____

Agreed and accepted:

Twitch Interactive, Inc.

Signature: _____
Name: _____
Title: _____
Date: _____

Company

Signature: _____
Name: _____
Title: _____
Date: _____

Exhibit A

Developer Content

<Please include list of games that are the subject of this Agreement.>