

Twitch.tv SDK License Agreement

The Twitch.tv SDK License Agreement (“Agreement”) is made available by Justin.tv, Inc. (“Twitch.tv”). By downloading or using the Twitch.tv SDK (as defined below), you and any company, entity, or organization on behalf of which you are accepting this Agreement hereby agree to be bound by all terms and conditions of this Agreement. If you do not agree to all terms and conditions of this Agreement, do not download or use the Twitch.tv SDK.

If you are downloading or using the Twitch.tv SDK on behalf of a company, entity, or organization, then you represent and warrant that you are an authorized representative of such company, entity, or organization with the authority to bind such company, entity, or organization to this Agreement; and agree to be bound by this Agreement on behalf of such company, entity, or organization. You and, if applicable, such company, entity, or organization may be referred to as the “Developer”.

1. Definitions

- 1.1. “Authorized Content” means the live audio visual stream of end user video game play, as encoded in real-time.
 - 1.2. “Authorized Purpose” means the scope of Developer’s permitted use of the Twitch.tv SDK, which is solely for purposes of the real-time encoding and live transmission to the Twitch.tv Platform of Authorized Content. For the avoidance of doubt, the Authorized Purpose expressly excludes (i) saving, storing, copying and archiving of any content encoded with the Twitch.tv SDK, and (ii) the transmission of any such content to any property other than the Twitch.tv Platform.
 - 1.3. “Developer Content” means the video games owned and/or controlled by Developer for which Developer wishes to use the Twitch.tv SDK to encode and stream live end user game play to the Twitch.tv Platform.
 - 1.4. “Twitch.tv Platform” means Twitch.tv’s hosted video streaming platform, currently located at www.twitch.tv, as well as any online features, services, applications (including mobile platform “apps”) and/or other programs expressly made available by Twitch.tv to Developer.
 - 1.5. “Twitch.tv SDK” means the software development kit and any other software that may be provided by Twitch.tv to Developer with the software development kit (including any updates to the foregoing).
2. Twitch.tv SDK License. During the term of this Agreement, Twitch.tv hereby grants Developer a worldwide, non-transferable (except for a permitted assignment of this Agreement), non-exclusive license to (a) use the Twitch.tv SDK internally for the sole purpose integrating the Twitch.tv SDK with Developer Content, (b) use certain portions of the Twitch.tv SDK solely as required for Developer’s creation and distribution of Developer Content, in the manner enabled by Twitch.tv and in accordance with any applicable documentation provided by Twitch.tv, and provided that any such distribution to an end user is subject to terms at least as protective of the Twitch.tv SDK as those set forth herein; and (c) operate the Developer Content as integrated with the Twitch.tv SDK solely for the Authorized Purpose, in the manner enabled by Twitch.tv and in accordance with any applicable documentation provided by Twitch.tv.
3. License Restrictions. Developer has no rights or licenses with respect to the Twitch.tv SDK or any documentation (collectively, the “Twitch.tv 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.tv Materials available to any third party or use the Twitch.tv Materials on a service bureau basis, (b) decompile, reverse engineer, or disassemble the Twitch.tv Materials, (c) create derivative works based on the Twitch.tv Materials; (d) modify, remove, or obscure any copyright, trademark, patent or other notices or legends that appear on the Twitch.tv Materials or during the use and operation thereof, or (e) use the Twitch Materials in any manner other than for the Authorized Purpose.
- ### **4. Ownership**
- 4.1. Twitch.tv Rights. As between Twitch.tv and Developer, Twitch.tv retains all right, title and interest in and to the Twitch.tv Platform, the Twitch.tv Materials and any materials created, developed or provided by Twitch.tv

in connection with this Agreement, including all intellectual property rights related to each of the foregoing. All rights not expressly granted by Twitch.tv to Developer herein are hereby reserved by Twitch.tv.

- 4.2. Developer Rights. Subject to Section 4.1, as between Developer and Twitch.tv, Developer retains all right, title and interest in and to the Developer Content, including all intellectual property rights related to each of the foregoing. All rights not expressly granted by Developer to Twitch.tv herein are hereby reserved by Developer.
5. Support. Twitch.tv shall have no obligation under this Agreement to provide any upgrades, patches, enhancements, fixes or any other support for the Twitch.tv Platform or Twitch.tv Materials. Twitch.tv 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.tv. Twitch.tv may terminate this Agreement at any time by providing thirty (30) days' notice to Developer. Additionally, Twitch.tv 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 and the licenses granted herein at any time by ceasing all use of the Twitch.tv Platform and Twitch.tv Materials and destroying or removing from all hard drives, networks, and other storage media all copies of the Twitch.tv Materials.
 - 6.4. Effect of Termination. Sections 3, 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.tv to Developer, either directly or indirectly, in writing, orally or by inspection of tangible objects, including without limitation the Twitch.tv SDK, the features and functionality of the Twitch.tv Platform and the results and performance of the Twitch.tv 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.tv to contest such order or requirement.
8. Warranty Disclaimer. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TWITCH.TV DOES NOT MAKE ANY WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT, AND TWITCH.TV 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.TV AND ITS SUPPLIERS, LICENSORS, AND PARTNERS DO NOT WARRANT THAT THE TWITCH.TV PLATFORM OR TWITCH.TV SDK WILL BE CORRECT, UNINTERRUPTED OR ERROR-FREE,

THAT DEFECTS WILL BE CORRECTED, OR THAT THE TWITCH.TV PLATFORM OR TWITCH.TV SDK ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. TWITCH.TV DOES NOT WARRANT THE RESULTS OF USE OF THE TWITCH.TV PLATFORM OR TWITCH.TV SDK. DEVELOPER ACKNOWLEDGES THAT TWITCH.TV MAY MODIFY OR SUSPEND THE TWITCH.TV PLATFORM AT ANY TIME IN ITS SOLE DISCRETION AND WITHOUT NOTICE.

9. Indemnification. Developer agrees to indemnify, defend, and hold harmless Twitch.tv 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 the alleged or actual breach of Developer's the terms set forth in this Agreement, provided that Twitch.tv: (a) 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; (b) grants Developer sole control of the defense and/or settlement of the claim; and (c) 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.tv's respective confidentiality obligations and preservation of attorney/client, work product, and other privileges.
10. Limitation of Liability. TWITCH.TV 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.TV WAS ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES. IN NO EVENT WILL TWITCH.TV'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE GREATER OF ONE HUNDRED DOLLARS (\$100) AND THE TOTAL FEES PAYABLE TO DEVELOPER UNDER THIS AGREEMENT DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE THE CLAIM FIRST AROSE. 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.tv 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.tv electronically via the Twitch.tv Platform 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 Santa Clara 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

Justin.tv, Inc.

Company

Attention:	Twitch.tv Contracts	Attention:_____
Address:	23 Geary St, Suite 800	Address:_____
	San Francisco, CA 94018	_____
Phone:	+1.415.808.0802	Phone:_____
Fax:	+1.415.808.0801	Fax:_____
Email:	contracts@twitch.tv	Email:_____

Agreed and accepted
Justin.tv, Inc.

Company

Signature: _____ Signature: _____

Name: _____ Name: _____

Title: _____ Title: _____

Date: _____ Date: _____