

NINTENDO – DEVELOPER PORTAL

Terms of Service and Non-Disclosure Agreement

Last Updated: July 9, 2015

The following Terms of Service and Non-Disclosure Agreement (the "**Agreement**") constitute a legally binding agreement between Nintendo Co., Ltd. ("**Nintendo**" or "**we**" or "**us**" or "**our**") and you or the entity you represent ("**you**" or "**your**"), and applies to your use and access of our developer portal (the "**Portal**") and the Services. For purposes of this Agreement, "**Services**" means all Materials (defined below), Nintendo Confidential Information (defined below), and other materials and documentation that we make available to you through the Portal.

1. Accepting this Agreement.

- a. In general.** This Agreement takes effect when you show your agreement with its terms by marking the respective checkbox and clicking the "I Accept" button on the Portal registration page (the "**Effective Date**"). You may not accept this Agreement if you are a person barred from receiving the Services under applicable law, including without limitation, the laws of the country in which you reside or in which you use the Services. IF YOU DO NOT AGREE TO ALL OF THESE TERMS, DO NOT CLICK THE "I ACCEPT" BUTTON OR UTILIZE THE PORTAL OR THE SERVICES.
- b. Individuals.** If you accept this Agreement on your own behalf, this Agreement is between you and Nintendo, and only you are permitted to utilize the Services. By entering this Agreement on your own behalf you represent and warrant to us that you are the age of legal majority in your country of residence.
- c. Entities.** If you accept this Agreement on behalf of a legal entity (e.g., a corporation, limited liability company, etc.), you represent and warrant to us that you have the authority to bind the entity to this Agreement.

- 2. Nintendo Affiliates.** This Agreement is between you and Nintendo. However, Nintendo may delegate certain of its obligations under this Agreement to, and the Services may be provided by, Nintendo's affiliated entities (including Nintendo of America Inc. and Nintendo of Europe GmbH). Nintendo shall remain liable under this Agreement for Services performed by its affiliated entities.

- 3. Ownership of Nintendo Materials.** The Services contain Nintendo owned or licensed content, including, without limitation, logos, designs, text, graphics, pictures, information, data, software, sound files, and other materials (collectively, the "**Materials**"). The Materials are the property of Nintendo or its licensors and all Materials are protected under applicable intellectual property laws.

4. Grant of License. Subject to your compliance with this Agreement, we hereby grant you a limited, royalty-free, non-assignable, and non-exclusive license to use the Services solely in connection with the development of applications or other content designed for use on our platforms, together with any other purpose expressly authorized by us in writing. You may not use the Services for any other purpose. Software provided as part of the Services is licensed and not sold to you. Nothing in this Agreement gives you a right to use any of our trade names, trademarks, service marks, logos, domain names, or other distinctive brand features. You agree that you will not remove, obscure, or alter any proprietary rights notices (including copyright and trademark notices) that may be affixed to or contained within the Services. We reserve all other rights not expressly granted in this Agreement.

5. Your Use of the Services.

- a. In general.** You may access and use the Services in accordance with this Agreement. You agree to comply with all applicable laws and regulations in your use of the Services, including all export and re-export laws and regulations.
- b. Your account.** To access the Services, you must create an account associated with a valid e-mail address. You may only create one account per e-mail address, and you may not transfer your account to another user once it has been created. You are responsible for maintaining the confidentiality of your account credentials and for keeping your account information accurate and up-to-date. You are responsible for all activities that occur under your account. Except to the extent caused by our breach of this Agreement, we and our affiliates are not responsible for any unauthorized access to your account. You agree to contact us immediately if you believe an unauthorized third party may be using your account or if your account information is lost or stolen.

We may allow you to create one or more sub-accounts, but only to the extent necessary for the purpose of and in connection with the license granted in Section 4 above, (i) for administrators who will have the right to manage your account and sub-accounts (the "**Administrator**"), and (ii) for employees and contractors permitted to utilize the Services on your behalf (the "**Users**"). You acknowledge and agree that: (i) only those employees and contractors that you designate as Administrators and Users will be provided access to the Services, and (ii) you are responsible for all acts and omissions of all Administrators and Users in connection with the Services, including without limitation, any breach of this Agreement. You will ensure that Administrators are responsible for the following items in connection with the use and maintenance of your account:

- Maintaining the confidentiality of your account, and all related credentials;
- Ensuring that all activities that occur in connection with the account comply with this Agreement;
- Overseeing the internal management and administration of the Services to your Users;
- Promptly reporting to us any breach or suspected breach of this Agreement; and

- Promptly terminating the access of any User who has breached this Agreement, or is no longer authorized by you to have access to the Services.
- c. **Account suspension.** If you or any Administrator or User breaches any term of this Agreement, or otherwise uses the Services in a manner not permitted by this Agreement or deemed by us to be improper (in our sole discretion; including, among other things, the involvement in anti-social forces prohibited by Japanese laws and regulations), we may suspend or terminate your account and the use of the Services by you, any Administrator or User. The length of any such suspension shall be in our sole discretion.
- d. **Changes to the Services.** We may modify or terminate all or a portion of the Services at any time without notice to you. You agree that future versions of the Services may be incompatible with applications or other content developed by you using previous versions of the Services.
- e. **Third Party Terms.** Additional third party terms contained within or distributed with the Services may apply to the Materials, or other third party software and/or information incorporated into the Services, and additional third party terms may apply to certain optional tools and your ability to access and use those tools. However, such third party terms do not otherwise apply to the Services. In addition to the foregoing, the following third party terms shall apply to your use of the Services with regard to your development of contents for the applicable platforms: <https://developer.nintendo.com/group/development/third-party-terms>.
- f. **No Reverse Engineering.** You will not directly or indirectly reverse engineer, or aid in the reverse engineering of, all or any part of the Services including without limitation any hardware, software, controller, development tools, or kits, except as specifically permitted under applicable laws and regulations.

6. Use of Forums.

- a. **Code of Conduct.** If you enter the "Forums" portion of the Portal (the "**Forums**"), you agree to abide by the terms of the Portal's Code of Conduct, which is posted on the main page of the Forums. You acknowledge and agree that the Code of Conduct is a part of and incorporated into this Agreement.
- b. **Posting of Materials.** You may post information and materials in the Forums including, but not limited to, code samples (all such information or materials are your "**Submissions**"). You hereby grant to (i) Nintendo, its affiliates, successors, and assigns; and (ii) each other recipient of the Submissions through his/her/its use of the Forums (the entities in (i) and (ii) collectively are the "**Recipients**"), a non-exclusive, royalty-free, perpetual, irrevocable license to (1) use, copy, distribute, transmit, publicly display, publicly perform, modify, and prepare derivative works of your Submissions; and (2) sublicense and authorize sublicenses of the

foregoing rights. No Recipient will have any obligation to pay you for your Submissions. For each Submission you provide, you represent that you have all rights necessary for you to grant the Recipients the rights granted in this section, and that the Submission does not infringe or misappropriate the intellectual property of any other party. Submissions by any Administrator or User will be deemed to be made with the authorization of their entity.

- c. **Monitoring the Forums.** To the maximum extent permitted by applicable law, we may monitor any electronic communications you make in connection with the Forums (except private communication) and may disclose such information in the event we have a good faith reason to believe that disclosure is necessary for purposes of ensuring your compliance with this Agreement, or for protecting the rights, property, or interests of Nintendo or any third party. We may also delete any Submission that is deemed inappropriate by us.

- 7. **No Warranty; Limitation of Liability.** THE SERVICES, THE MATERIALS, AND THE NINTENDO CONFIDENTIAL INFORMATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND FROM US. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. TO THE MAXIMUM EXTENT PERMITTED BY LAW, WE WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND ARISING OUT OF OR RELATING TO THE SERVICES, THE MATERIALS, AND THE NINTENDO CONFIDENTIAL INFORMATION, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IF A LAW RESTRICTS OUR ABILITY TO LIMIT LIABILITY OR DISCLAIM WARRANTIES, THE LIMITATIONS LISTED ABOVE MAY NOT APPLY TO YOU. IN THAT CASE, WE LIMIT OUR LIABILITY AND DISCLAIM WARRANTIES TO THE GREATEST EXTENT PERMITTED BY LAW. THE ABOVE DISCLAIMER AND LIMITATION OF LIABILITY IS MADE ON BEHALF OF NINTENDO, EACH OF ITS AFFILIATES, AND THE DIRECTORS, OFFICERS, EMPLOYEES, LICENSORS, VENDORS AND AGENTS OF EACH OF THE FOREGOING.

- 8. **Nintendo Confidential Information and Nondisclosure.** This Section 8 applies to your use and access of the Materials, and any other information, software, hardware, equipment, tools, guidelines, accounts, passwords, and other materials and documentation that we make available to you in connection with the Services (the "**Nintendo Confidential Information**"). You understand that we or our affiliates may now market or be developing products or services that may compete with products or services marketed or under development by you. Any communications between you and us will not affect our right to develop, make, use, procure and/or market products or services now or in the future that may compete with those offered by you, or require us to disclose any information to you. Subject to the obligations of this Section 8, neither party is precluded from independently developing technology or pursuing business opportunities similar to those contemplated by the parties' business relationship.

- a. **Scope.** Nintendo Confidential Information includes information provided to you by us, or a third party under a confidentiality obligation to us, in oral, demonstrative, written, graphic or

machine-readable form, relating to our products, services or business. You may use the Nintendo Confidential Information only for the purpose of and in connection with the license granted in Section 4 above.

- b. Return of Information.** Upon termination of this Agreement or our prior request, you will immediately (i) cease using the Nintendo Confidential Information and (ii) return or, if requested so or if such Confidential Information is not suitable for return, destroy any tangible forms of the Nintendo Confidential Information. Upon request, we may audit you to confirm, or request that you certify in writing, that all such Nintendo Confidential Information has been so returned or destroyed.
- c. Protection of Information.** You agree to use at least the same degree of care as you use with your own similar information to protect the Nintendo Confidential Information, but in no event less than a reasonable degree of care, and agree in particular that you will (i) only use Nintendo Confidential Information as authorized by this Agreement; (ii) communicate or disseminate Nintendo Confidential Information only to those employees, agents or contractors with a need to know who have entered into obligations of confidentiality at least as restrictive as those imposed by this Agreement; and (iii) not disclose Nintendo Confidential Information. If you have reason to believe that there has been unauthorized use or disclosure of Nintendo Confidential Information, you will immediately notify us. Upon notice to you, we (either Nintendo itself or through an independent auditor) may audit your use and protection of Nintendo Confidential Information to ensure your compliance with this Agreement. You agree to provide us with such access to your facilities, employees, information, and systems as is reasonably required for us to perform any such audit.
- d. Exclusions.** This Section 8 imposes no obligation upon you with respect to Nintendo Confidential Information that (i) was in your possession before receipt from us, or a third party under confidentiality obligations with us; (ii) is or becomes publicly available through no fault of you; (iii) is rightfully received by you from a third party not under a duty of confidentiality to us; (iv) written records establish was independently developed by you without a breach of this Agreement; or (v) is disclosed by you with our prior written approval. If a government body or court of law requires you to disclose Nintendo Confidential Information, you will give us reasonable advance notice so that we may contest the disclosure or seek a protective order.
- e. No Obligation.** This Section 8 imposes no obligation on us to provide you with Nintendo Confidential Information.

- 9. Privacy and Information.** Please refer to Nintendo's Privacy Notice, which can be found online at <https://developer.nintendo.com/privacy>, for information on how we process information collected through the Portal.

10. Indemnification. To the maximum extent permitted by law, you agree to defend, indemnify, and hold harmless Nintendo, its affiliates, and the directors, officers, employees, licensors, vendors, and agents of each of the foregoing from and against any and all claims, actions, suits, and proceedings, as well as any and all losses, liabilities, damages, costs, and expenses (including reasonable attorneys' fees and costs) arising out of or accruing from (i) your use of the Services, and (ii) any non-compliance by you with this Agreement.

11. Termination. We may at any time, terminate this Agreement effective immediately by giving the notice to your registered email, if (i) you fail to comply with this Agreement or any other agreement between you and us; (ii) you cease your business operation or become the subject of any voluntary or involuntary proceeding under the applicable bankruptcy or insolvency laws; or (iii) if we deem it necessary for legal, technical or commercial reasons (with a reasonable advance notice). You may at any time terminate this Agreement by giving the notice to us using your registered email.

12. Effect of Termination. In the event of termination of this Agreement, (i) your account and rights to use the Services shall immediately terminate, and (ii) you cannot use or disclose the Services at any time for any purpose. Sections 1-b, 1-c, 2, 3, 5-b, 5-f, 6-b, 7, 8, 10, 12, 13, 14, 15 and 16 and any other provisions that reasonably may be construed as surviving this Agreement will survive the termination of this Agreement.

13. Changes to this Agreement. We may change this Agreement from time to time so far as this is necessary or helpful to enhance the Portal, the Services or to adapt it to reflect changes in technical or legal requirements. If we make any material changes to this Agreement, we'll provide at least fourteen (14) days prior notice of the changes by sending to your registered email address, putting the updated version of this Agreement on the Portal, and updating the "Last Updated" date. If you continue to use the Portal after the effective date of the changes, the changes will be deemed to be accepted by you.

14. Governing Law.

- a. Japan, Korea and Europe.** If your country of residence as indicated during the registration of your account is in Japan, Korea or Europe, this Agreement and your relationship with us under this Agreement are governed by the laws of Japan without regard to its conflict of laws provisions. You irrevocably consent to the exclusive jurisdiction of the Tokyo District Court in connection with any action, suit, proceeding, or claim arising under or by reason of this Agreement.

(For the purpose of this section 14-a "Europe" shall mean the following countries: Republic of Albania, Principality of Andorra, Republic of Armenia, Republic of Austria, Republic of Azerbaijan, Republic of Belarus, Kingdom of Belgium, Bosnia and Herzegovina, Republic of Bulgaria, Republic of Croatia, Republic of Cyprus, Czech Republic, Kingdom of Denmark, Republic of Estonia, Republic of Finland, French Republic, Georgia, Federal Republic of

Germany, Hellenic Republic, Hungary, Republic of Iceland, Ireland, Italian Republic, Republic of Kazakhstan, Republic of Latvia, Principality of Liechtenstein, Republic of Lithuania, Grand Duchy of Luxembourg, Republic of Macedonia, Republic of Malta, Republic of Moldova, Principality of Monaco, Montenegro, Kingdom of the Netherlands, Kingdom of Norway, Republic of Poland, Portuguese Republic, Romania, Russian Federation, Republic of San Marino, Republic of Serbia, Slovak Republic, Republic of Slovenia, Kingdom of Spain, Kingdom of Sweden, Swiss Confederation, Republic of Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland.)

- b. North America, South America, or Other.** If your country of residence as indicated during the registration of your account is within North America, South America, or another area within which Nintendo offers the Services (other than the countries in Section 14(a) above), this Agreement and your relationship with us under this Agreement are governed by the laws of the State of Washington without regard to its conflict of laws provisions. You irrevocably consent to the jurisdiction and venue of the Federal, state, and local courts located in King County, Washington, U.S.A. in connection with any action, suit, proceeding, or claim arising under or by reason of this Agreement. You waive all defenses for lack of personal jurisdiction and forum nonconvenience.
- c. Remedies.** You acknowledge and agree that any breach of or default under this Agreement by you would cause irreparable harm to Nintendo, the extent of which would be difficult to ascertain. In the event of any such breach or default, or the threat of such breach or default, you agree that Nintendo will be entitled to injunctive relief, specific performance or available other remedy, without the necessity of showing actual damages or posting a bond or other security. The rights and remedies of Nintendo under this Section 14(c) are in addition to, and not in lieu of, any other right or remedy afforded to Nintendo under any other provision of this Agreement by law or otherwise.

15. Miscellaneous. Except as expressly provided herein, this Agreement impose no obligation on either party to purchase, sell, license, transfer, or otherwise make use of any technology, services, or products, or enter into any further business relationship. This Agreement may not be assigned or transferred by you without our prior written consent. If any part of this Agreement is held to be invalid or unenforceable, that part will no longer apply to the parties and will be replaced by an enforceable provision that most closely reflects the original intent of the parties, but all other parts of this Agreement will remain in effect unless otherwise provided. Our failure or delay to insist upon or enforce your strict compliance with this Agreement will not constitute a waiver of any of our rights. This Agreement is made in the English language and any translated version of this Agreement is provided for reference purpose only. In the event of any inconsistency between non-English version and the English version, the English version shall prevail.

16. Integration. This Agreement constitutes the entire agreement between the parties relating to the subject matter hereof. All prior negotiations, representations, agreements, and understandings are merged into, extinguished by, and completely expressed by this Agreement.