

Indix SDK Terms of Service

Last updated: April 4, 2016

This Indix SDK Agreement (this "Agreement") is a binding legal agreement between you and Indix Corporation ("Indix", "us" or "we") regarding your use of the Software. BY CHECKING THE BOX MARKED "I agree to the SDK Agreement" OR OTHERWISE USING THE SOFTWARE, YOU ARE AGREEING TO BE LEGALLY BOUND BY THIS AGREEMENT AND YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THIS AGREEMENT. If you are not eligible, or do not agree to this Agreement, then please do not use the Software. Your specific use may also be subject to additional terms as specified on Indix's developer dashboard or as provided directly to you by Indix.

All disputes between you and Indix relating to this Agreement will be resolved by BINDING ARBITRATION. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS UNDER THIS CONTRACT (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT A JUDGE OR JURY and your claims cannot be brought as a class action. Please review the Indix Terms of Service for the details regarding your agreement to arbitrate any disputes with Indix.

You must be at least eighteen (18) years of age to use the Software. By agreeing to this Agreement, you represent and warrant to us: (i) that you are at least eighteen (18) years of age; and (ii) that your use of the Software is in compliance with any and all applicable laws and regulations. If you are using the Software on behalf of an entity, organization, or company, you represent and warrant that you have the authority to bind such organization to this Agreement and you agree to be bound by this Agreement on behalf of such organization.

1. DEFINITIONS

1.1 "Documentation" means any documentation provided to you by Indix in connection with the Software.

1.2 "Intellectual Property Rights" means all worldwide rights in, arising out of, or associated with: (a) published and unpublished works of authorship, including compilations, databases, derivative works, maskworks, and software (including source code and object code), and all copyrights and all other rights corresponding thereto, including moral rights; (b) inventions and discoveries, including all United States and foreign patents, and all registrations and applications therefor and all reissues, divisionals, re-examinations, corrections, renewals, extensions, provisionals, continuations and continuations-in-part thereof; (c) trademarks, service marks, internet domain names, URLs, and other designations of origin, including all trademark and service mark registrations and applications therefor and all goodwill associated therewith throughout the world; and (d) trade secrets, know-how, and confidential or proprietary information, including algorithms, customer and supplier lists, formulas, know-how, methods, processes, programs, prototypes, systems, and techniques, including all trade secrets and other rights in know how; and (e) the right to sue for past, present, or future infringement of any of the foregoing.

1.3 "Redistributable Code" means any sample software provided to you in object code format by Indix in connection with this Agreement.

1.4 "Sample Code" means any sample software provided to you in source code format by Indix in connection with this Agreement.

1.5 "Software" means, collectively, all Redistributable Code and Sample Code.

2. LICENSE GRANT AND RESTRICTIONS

2.1 License Grant. Subject to the terms and conditions of this Agreement, Indix hereby grants to you a limited, personal, worldwide, royalty-free, non-exclusive, nonsublicenseable, and nontransferable license to:

- (a) internally use a reasonable number of copies of the Documentation solely in connection with your use of the Software;
- (b) reproduce, modify, distribute and otherwise exploit the Sample Code in either object code or source code formats; and
- (c) reproduce and distribute the Redistributable Code in object code format only.

2.2 License Restrictions. You will not (and will not permit any third party to):

- (a) transfer, disclose or distribute any portion of the Software or Documentation or access to either to any third party except as permitted by Section 2.1;
- (b) modify or otherwise create derivative works of the Software or Documentation except as permitted by Section 2.1;
- (c) reverse engineer, disassemble, decompile, or otherwise attempt to gain access to the source code of the Redistributable Code (except to the extent permitted by applicable law) or remove, alter, or cover any copyright notices or other proprietary rights notices placed or embedded on or in any part of the Software or Documentation; or
- (d) subject any portion of the Software or Documentation to the terms of any "open source" or "creative commons" license.

2.3 Ownership of the Software and Reservation of Rights. You agree and acknowledge that the Software and Documentation, including all Intellectual Property Rights in the Software and Documentation, are the sole and exclusive property of Indix and its licensors. All rights not expressly granted to you in this Agreement are reserved to Indix. Indix agrees that, subject to Indix's ownership of the Software and Documentation, you retain all rights, including Intellectual Property Rights, in and to any software you develop using the Software and Documentation.

2.4 Export Restrictions. You agree to comply with all applicable export and reexport control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control ("OFAC"), and the International Traffic in Arms Regulations ("ITAR") maintained by the Department of State. Specifically, you covenant that you shall not -- directly or indirectly -- sell, export, reexport, transfer, divert, or otherwise dispose of any

products, software, or technology acquired by the use of the Software to any destination, entity, or person prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. Additionally, you represent that you are not located in a sanctioned country (currently Cuba, Iran, North Korea, Sudan, and Syria and the Crimea Region of the Ukraine) and are not a prohibited person or entity as defined in the laws and regulations listed above.

2.5 Confidentiality. You will maintain the confidentiality of and not disclose to any third party: (a) the terms of this Agreement, (b) all non-public information disclosed by Indix to you pursuant to this Agreement (including the Documentation), and (c) all feedback and Software performance data.

2.6 No Warranties. You will not make any representation or any express or implied warranty to third parties on behalf of Indix.

3. TERM AND TERMINATION

3.1 Term. The term of this Agreement begins when you first access or use the Software and continues until terminated in accordance with the provisions of this Agreement.

3.2 Termination. Either party may terminate this Agreement without cause upon notice. This Agreement will terminate automatically upon your breach of any provision of this Agreement.

3.3 Effect of Termination. Upon termination of this Agreement for any reason, your licenses to the Redistributable Code will end and you will cease all use of the Redistributable Code. Sections 1, 2 (except for Section 2.1(c)), 3.3 and 4 through 6 will survive any expiration or termination of this Agreement.

4. INDEMNIFICATION

4.1 Indemnification. We will defend, indemnify, and hold you harmless from and against any harms, expenses, damages, and losses ("Losses") arising out of any third party claim that the Software, as provided by Indix and when used by you in accordance with this Agreement, infringes any United States patent or copyright that is issued or registered as of the Effective Date, excluding any claims where the alleged infringement is caused by the combination of the Software with any material or technology not provided by Indix, or where the alleged infringement involves any modifications to or derivative works of the Software. You will defend, indemnify, and hold Indix harmless from and against any Losses arising out of or in connection with any third party claim related to your use of the Software or Documentation or any breach of this Agreement.

4.2 Procedure for Indemnification. In the event of any claim under which a party (the "Indemnifying Party") is obligated hereunder to indemnify the other party (the "Indemnified Party"), the Indemnified Party will provide the Indemnifying Party with prompt written notice of the claim and reasonable assistance, at the Indemnifying Party's request and expense, with the defense and settlement of the claim, provided that Indemnifying Party must not settle any indemnified claim that requires any admission of wrongdoing or any obligation other than the payment of money that is the Indemnifying Party's obligation to pay without the Indemnified Party's prior written consent, which consent will not be unreasonably withheld, conditioned, or delayed.

4.3 Limited Remedy. This Section 4 states Indix's sole and exclusive liability, and your sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third party Intellectual Property Rights by the Software.

5. LIMITATIONS OF LIABILITY

5.1 DISCLAIMER OF WARRANTIES. THE SOFTWARE, DOCUMENTATION, AND ALL INTELLECTUAL PROPERTY RIGHTS MADE AVAILABLE OR LICENSED BY INDIX UNDER OR IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. INDIX EXPRESSLY DISCLAIMS ALL WARRANTIES, DUTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, AND ALL INTELLECTUAL PROPERTY RIGHTS RELATED TO THE SOFTWARE AND DOCUMENTATION, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NONINFRINGEMENT.

5.2 LIMITATION OF LIABILITY. NEITHER INDIX NOR ITS LICENSORS WILL BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, COVER, OR CONSEQUENTIAL DAMAGES ARISING FROM OR OTHERWISE RELATED TO THIS AGREEMENT, EVEN IF INDIX OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. INDIX'S TOTAL LIABILITY (WHETHER IN CONNECTION WITH THIS AGREEMENT OR THE INDIX TERMS OF SERVICE) TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO GREATER OF (I) THE FEES PAYABLE BY YOU TO INDIX DURING THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO ANY CLAIM; OR (II) US\$100.

5.3 INDEPENDENT ALLOCATIONS OF RISK. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES AND WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY IN THIS AGREEMENT. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED TO YOU BY INDIX AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT.

6. MISCELLANEOUS

6.1 No Partnership, Joint Venture or Franchise. This Agreement will not be construed as creating a partnership, joint venture, or agency relationship or as granting a franchise. The parties are performing their obligations under this Agreement as independent contractors.

6.2 Assignability. You may not assign (including by way of merger, reorganization, consolidation, or the sale of all or substantially all your assets or equity) your rights, duties, or obligations under this Agreement without Indix's prior written consent, which consent will not be unreasonably withheld. Indix may assign this Agreement without your consent to a successor if the successor agrees to assume and fulfill all of Indix's obligations under this Agreement.

6.3 Notices. Any notice required or permitted to be given in accordance with this Agreement will be effective two business days after mailing if it is in writing and sent by certified or registered mail, or insured courier, return receipt requested to the address supplied by you upon registration for your Indix Account in the case of notice by Indix and to the address set forth below in Section 6.11 in the case of Indix.

6.4 Force Majeure. Neither party will be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond its reasonable control.

6.5 Construction and Interpretation. If any part of this Agreement is found to be illegal, unenforceable, or invalid, the remaining portions of this Agreement will remain in full force and effect. The headings appearing at the beginning of sections have been inserted for identification and reference purposes only and must not be used to interpret this Agreement. The word "or" is used in the inclusive sense of "or" and the words "or," "any," and "either" are not exclusive. If any limitation or restriction on the grant of any license to you under this Agreement is found to be illegal, unenforceable, or invalid, the license will immediately terminate. Failure by a party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. The parties have had an equal opportunity to participate in the drafting of this Agreement and the Indix and no ambiguity will be construed against any party based upon a claim that the party drafted the ambiguous language.

6.6 Entire Agreement. This Agreement, along with the dispute resolution provisions contained in the Indix Terms of Service, is the final and complete expression of the agreement between the parties regarding the subject matter of this Agreement and supersede all previous communications. If you are accessing Indix data, you may only do so subject to the Indix Terms of Service.

6.7 Governing Law and Disputes. This Agreement will be governed in all respects in accordance with the local laws of the State of Washington, without reference to its choice of law rules and not including the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods. Any and all disputes arising under or in connection with this Agreement will be resolved in accordance with the dispute resolution procedures set forth in the Indix Terms of Service.

6.10 Changes to this Agreement. We reserve the right, at our discretion, to change this Agreement on a going-forward basis at any time. Please check this Agreement periodically for changes. In the event that a change to this Agreement materially modifies your rights or obligations, we will make reasonable efforts to notify you of such change. We may provide notice through a pop-up or banner within your Indix Account, by sending an email to any address you may have used to register for an account, or through other mechanisms. Additionally, if the changed terms materially modify your rights or obligations, we may require you to provide consent by accepting the changed Terms. If we require your acceptance of the changed terms, changes are effective only after your acceptance. If you do not accept the changed terms, we may terminate your access to and use of the Software. All other changes are effective upon publication of the changed terms. Disputes arising under this Agreement will be resolved in accordance with the terms in effect at the time the dispute arose.

6.11 Contact Information. The services hereunder are offered by Indix Corporation, located at 818 Stewart St., Suite 910, Seattle, WA 98101, USA. You may contact us by sending correspondence to the foregoing address or by emailing us at legal@indix.com. If you are a California resident, you may have this Agreement mailed to you electronically by sending a letter to the foregoing address with your electronic mail address and a request for this Agreement.