

# Terms of Use

This Terms of Use Agreement ("**Terms of Use**") *applies to use of the Indi website located at <http://www.indi.com> (the "**Site**").* The Site is the property of Indi.com Inc. (together with its parent company, sister companies and affiliated companies, "Indi"). **BY USE THE SITE, YOU AGREE TO THESE TERMS OF USE. IF YOU DO NOT AGREE, DO NOT USE THE SITE.**

## 1. General Use of Site and Content.

(i) Indi reserves the right, at its sole discretion, to change, add or remove portions of this Terms of Use and/or our Privacy Policy, at any time. It is your responsibility to check this Terms of Use and our Privacy Policy each time before using the Site. Your continued use of the Site following the posting of changes will mean that you accept and agree to the changes. As long as you comply with this Terms of Use and any such modifications, Indi grants you ("End User") a personal, non-exclusive, non-transferable, non-sublicensable, limited privilege to enter and use the Site solely in accordance with these Terms of Use. The Site includes a variety of challenges that each have their own separate rules that must be agreed to before you are allowed to participate in the challenge ("Challenge Rules"). To the extent of any conflict between these Terms of Use and any particular Challenge Rules, these Terms of Use shall govern.

(ii) All media, software, text, images, graphics, user interfaces, music, videos, photographs, trademarks, logos, artwork and other content on the Site (collectively, "**Content**"), *including but not limited to the design, selection, arrangement, and coordination of such Content on the Site is owned or licensed by or to Indi, and is protected by copyright, trade dress, and trademark laws, and various other intellectual property rights laws. Except as expressly provided in this Terms of Use, no part of the Site and no Content may be reproduced, recorded, retransmitted, sold, rented, broadcast, distributed, published, uploaded, posted, publicly displayed, altered to make new works, performed, digitized, compiled, translated or transmitted in any way to any other computer, website or other medium or for any commercial purpose, without Indi's prior express written consent. Except as expressly provided herein, you are not granted any rights or licenses to any patents, copyrights, trade secrets, trade dress, rights of publicity or trademarks with respect to any of the Content, and Indi reserves all rights not expressly granted hereunder. Indi<sup>TM</sup> and all the other marks, custom graphics, icons, logos and service names on the Site are the registered trademarks, trademarks or service marks of Indi or its licensors. The use of any such trademark or service mark without Indi's express written consent is strictly prohibited.*

(iii) Any opinions, advice, statements, services, offers, or other information or content expressed or made available by third parties, including information providers, End Users or any other user of Indi, are those of the respective author(s) and not of Indi. Neither Indi nor any third-party provider of information guarantees the accuracy, completeness, or usefulness of any content, nor its merchantability or fitness for any particular purpose. Under no circumstances will Indi be liable for any loss or damage caused by

an End User's reliance on information obtained through Indi. It is the responsibility of End User to evaluate the accuracy, completeness or usefulness of any information, opinion, advice or other content available through Indi. Indi and its agents have the right at their sole discretion, but not an obligation, to monitor and remove at any time any content that, in Indi's judgment, does not comply with the Terms of Use or any Challenge Rules, or is otherwise harmful, objectionable or inaccurate. Indi is not responsible for any failure or delay in removing such content.

## 2. Registration; Customer Accounts.

(i) Certain services offered on or through the Site require you to first open an account. You are responsible for maintaining the confidentiality of your account information, including your password, and for all activity that occurs under your account. You agree to notify Indi immediately of any unauthorized use of your account or password, or any other breach of security. You agree to provide us with accurate, current and complete information about yourself and your billing/payment information as prompted by the registration process or any conversion and redemption process.

(ii) You also agree that Indi may, in its sole discretion and without prior notice to you, terminate your access to the Site and your account for any reason, including without limitation: (1) attempts to overcome any software security features limiting use of or protecting any Content, (2) suspected or actual violation of this Terms of Use or any Challenge Rules, (3) suspected or actual copyright infringement, or (4) requests by law enforcement or other government agencies. You agree that Indi will not be liable to you or to any third party for termination of your account and/or access to the Site and the services. For purposes of clarity, upon any termination of your account for any reason, all licenses granted to you hereunder shall immediately terminate, but all other portions of this Terms of Use shall survive such account termination.

(iii) You hereby represent, warrant and agree not to (a) take any action or (b) upload, post, submit or otherwise distribute or facilitate distribution of any content (including text, communications, software, images, sounds, data or other information) using any communications service, message board, directory, survey, feedback or other service available on or through the Site or the services offered on the Site, that:

- is unlawful, threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, tortious, obscene, offensive, profane or which in any way promotes or facilitates any such activity;
- is or promotes racism, bigotry, terrorism, or any hatred or physical harm of any kind against any group, individual or animal;
- infringes, violates or misappropriates any patent, trademark, trade secret, copyright, right of publicity or other right of any party, or otherwise promotes or facilitates any such activity;
- is in violation of any applicable local, state, national and international laws and regulations, or otherwise promotes or facilitates any such activity;
- constitutes unauthorized or unsolicited advertising, junk or bulk e-mail ("spamming"), chain letters or any form of lottery or gambling, or which in any way promotes or facilitates any such activity;

- solicits passwords, financial or any other personal identifying information from End Users, or otherwise promotes or facilitates any such activity;
- imposes an unreasonable or disproportionately large load on any Indi computing, storage or communications infrastructure, or attempts to gain unauthorized access to the Service, other accounts, computer systems or networks connected to the Service, through password mining or otherwise, or which in any way promotes or facilitates any such activity;
- contains software viruses or any other computer codes, files, or programs that are designed or intended to disrupt, damage, limit or interfere with the proper function of any software, hardware, or telecommunications equipment or to damage or obtain unauthorized access to any system, data or other information of Indi or any third party, or which in any way promotes or facilitates any such activity;
- harvests or collects any information from the Site or End Users (other than information directly related to End User's own Transactions), or which in any way promotes or facilitates any such activity;
- impersonates any person or entity, including any employee or representative of Indi, or which in any way promotes or facilitates any such activity;
- constitutes any improper or inappropriate (in Indi's sole determination) communication or attempted communication with a minor; or
- provides any of the following information: your or any other person's (a) home or business address, (b) credit card numbers, (c) social security card numbers, or (d) telephone numbers
- provides instructional information about illegal activities such as making or buying illegal weapons, violating someone's privacy, or providing or creating computer viruses, or which in any way promotes or facilitates any such activity

### 3. Consent To Collection, Use & Disclosure of Your Personal Information.

(i) As more fully described in our Privacy Policy, you must disclose certain Personally Identifiable Information to use our Site, register, and to participate in certain challenges, features and functionally offered. As a condition of registering with our Site or using any service offered on or in connection with the Site, you represent that you have first read our Privacy Policy and consent to the collection, use and disclosure of your Personally Identifiable Information and Non-Personally Identifiable Information as described in our Privacy Policy. By establishing an account with us, you grant permission for Indi to contact you at your e-mail address. To stop receiving our marketing emails, send an e-mail to us at [optout@indi.com](mailto:optout@indi.com) or follow the opt-out procedures set forth in such marketing emails.

(ii) Your Indi account name will be publically visible when you post any content on the Site. By registering and becoming a member of Indi, all visitors and other Indi members will be able to search your profile by entering (a) your first and/or last name provided by you in your account information, (b) your email address as provided by you in your account information, and (c) other pieces of basic information in your profile, including without limitation, any and all Content that you are associated with. If you send an email, text or other form of communication to another individual using any service or

tools offered on the Site, your first name, last name and email address will be disclosed to the recipient of any such communication.

**4. Posting Content.** The potential public display and performance of your videos and other posted content on the Indi.com site and any resulting publicity generated constitutes the sole consideration for the licenses, waivers and releases granted in this section. Except as otherwise expressly set forth in any Challenge Rules, by the act of submitting a video, comments, reviews, ideas or feedback through a challenge or otherwise on the Site, you hereby grant to Indi.com and its designees the irrevocable, fully paid-up, royalty free, sublicensable, transferable, perpetual, worldwide exclusive right and license to reproduce, distribute, transmit, publicly display and perform, modify, create derivative works of, synchronize, broadcast and generally use any such content (or parts thereof) whether recorded, distributed, displayed, streamed or performed/broadcast on or transferred to videotape, film, slides, photographs, audio tapes, internet or any other media, now known or later developed. For purposes of clarity, this grant includes without limitation the right to (a) edit and to use, not use or re-use such content in whole or part as Indi.com may elect in its sole discretion, and you agree to release and waive any and all privacy or moral rights you may have with respect to the way in which your name, likeness, image, portrait, picture, voice, appearance and/or performance is displayed or edited within such content or in connection with the promotion of such content or the collection of winning videos for a challenge, and (b) broadcast, exhibit, market, sell and otherwise distribute any such content, either in whole or in parts, and either alone or with other products, for any purpose that Indi.com or its designees in their sole discretion may determine.

**5. Indemnification.** You agree to indemnify and hold harmless Indi and its parents, sister companies, subsidiaries, affiliates, service providers, other End Users, distributors, licensors, officers, directors and employees from any claim or demand, including reasonable attorneys' fees, made by any third party arising out of or related to any claim, demand or allegation which if true would constitute your violation of this Terms of Use, or your violation, infringement or misappropriation of any law, regulation or third-party right.

**6. Disclaimer of Warranties.** THE SITE, SERVICES, CONTENT, DATA, AND INFORMATION ARE PROVIDED "AS IS." INDI EXPRESSLY DISCLAIMS ALL WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER RELATING TO OR REFERENCED BY THE INDI SITE, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY OR QUALITY OF DATA AND FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY, TITLE, NON-INFRINGEMENT, LACK OF VIRUSES OR CORRESPONDENCE TO DESCRIPTION.

**7. Limitation of Liability.** IN NO EVENT SHALL INDI, ITS LICENSORS OR ANY OF THEIR OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR AFFILIATES BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, DIRECT, INDIRECT, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY

LOSS) ARISING OUT OF THIS TERMS OF USE, ANY CHALLENGE OR CHALLENGE RULES OR THE USE OF OR INABILITY TO USE THE SITE, ANY AND ALL INTERACTIONS OR COMMUNICATIONS WITH ANY VISITOR OR END USER, OR ANY PRODUCTS, SERVICES, CONTENT PROVIDED ON OR THROUGH THE SITE, WITH THE DELAY IN USE THE SITE OR RELATED SERVICES, THE PROVISION OF OR FAILURE TO PROVIDE ANY PRODUCTS OR SERVICES, OR FOR ANY INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND CONTENT ON OR OBTAINED THROUGH THE SITE, OR OTHERWISE ARISING OUT OF THE USE OF THE SITE WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE EVEN IF INDI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING ELSE IN THIS TERMS OF USE OR POSTED ON THE SITE, THE MAXIMUM LIABILITY THAT INDI SHALL HAVE IN THE AGGREGATE IS LIMITED TO ONE HUNDRED US DOLLARS. YOU ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS OF LIABILITY, DISCLAIMERS OF WARRANTIES AND LIMITED REMEDIES SET FORTH HEREIN REPRESENT AN INSEPARABLE ALLOCATION OF RISK (INCLUDING, WITHOUT LIMITATION, IN THE EVENT OF A TOTAL AND FUNDAMENTAL BREACH OF THIS TERMS OF USE) THAT IS AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES.

8. Policy to Terminate Privileges for Copyright Infringement. A. If you believe that your copyright has been infringed through the Indi.com website, please contact "Legal Department", at: Attn: Legal Department, Indi Inc., 20 Enterprise, Suite 310, Aliso Viejo CA 92656

Any written notice describing the infringing activity must include the following information:

1. An electronic or physical signature of the person authorized to act on behalf of the owner of a right that is allegedly infringed;
2. A description of where the allegedly infringing material is located on the site;
3. Information reasonably sufficient to allow us to contact you, such as your address, telephone number and e-mail address;
4. A statement by you that you have a good faith belief that the disputed use of the material is not authorized by the copyright or other proprietary right owner, its agent, or the law; and
5. A statement by you that the above information and notification is accurate, and under penalty of perjury, that you are the copyright owner or authorized to act on behalf of the owner whose exclusive right is allegedly infringed.

9. Counter-Notice. If you believe that your Content that was removed (or to which access was disabled) is not infringing, or that you have the authorization from the copyright owner, the copyright owner's agent, or pursuant to the law, to post and use the material in your Content, you may send a counter-notice containing the following information to the Copyright Agent: Your physical or electronic signature; Identification of the Content that has been removed or to which access has been disabled and the

location at which the Content appeared before it was removed or disabled; A statement that you have a good faith belief that the Content was removed or disabled as a result of mistake or a misidentification of the Content; and Your name, address, telephone number, and e-mail address, a statement that you consent to the jurisdiction of the courts in Orange County, California, and a statement that you will accept service of process from the person who provided notification of the alleged infringement. If such a counter-notice is received, Indi may send a copy of the counter-notice to the original complaining party informing that person that Indi may replace the removed Content or cease disabling it in 10 business days. Unless the copyright owner files an action seeking a court order against the Content provider, member or user, the removed Content may be replaced, or access to it restored, in 10 to 14 business days or more after receipt of the counter-notice, at Indi's sole discretion.

10. General. No delay or failure to take action under this Terms of Use or any Challenge Rules shall constitute any waiver by Indi of any provision of this Terms of Use or any Challenge Rules. If any provision of this Terms of Use or Challenge Rules is invalid or unenforceable under applicable law, it is, to that extent, deemed enforceable to the fullest extent possible (and severable in the event such provision is completely unenforceable) and the remaining provisions of this Terms of Use and/or Challenge Rules will continue in full force and effect. This Terms of Use and all Challenge Rules will bind and inure to the benefit of Indi's successors and assigns. Any claim under these Terms of Use or a Challenge Rule must be brought within one (1) year after the cause of action arises. This Terms of Use and all Challenge Rules shall be governed by the laws of the State of California without regard to or application of any conflict of laws provisions. You consent to the exclusive jurisdiction of the state and federal courts sitting in Orange County, in the State of California. This Terms of Use and all Challenge Rules are personal to you and may not be transferred, assigned or delegated to anyone. Any attempt by you to assign, transfer or delegate this Terms of Use or any Challenge Rules shall be null and void. Indi may freely assign this Terms of Use and any or all Challenge Rules without consent or notice. This Terms of Use and each Challenge Rule constitutes the complete and exclusive agreement between Indi and you with respect to the subject matter hereof and supersedes all prior oral or written understandings, communications or agreements not specifically incorporated herein.