Indie Solver EIRL Terms of Service Agreement

Last update: August 29, 2018

This Indie Solver Terms of Service Agreement ("Agreement") is a legal agreement between Indie Solver EIRL ("Indie Solver", "we" or "us") and the entity or person ("you", "your", or "user") who accessed websites, software and Application Programming Interfaces (APIs) offered by Indie Solver and its affiliates (collectively the "Service"). This Agreement describes the terms and conditions that apply to your use of the Service.

If you do not understand some of the terms of this Agreement, please contact us by email at contact@indiesolver.com before using the Service. If you are entering into the terms and conditions of this Agreement on behalf of a company (or other entity) or if you are accessing the Service in your capacity as an employee, consultant or agent of a company (or other entity), you represent that you are an employee, consultant or agent of such company (or other entity) and you have the authority to agree, on behalf of such company (or other entity), to all of the terms and conditions of these Terms.

Except as explicitly stated otherwise, legal notices shall be served on Indie Solver at contact@indiesolver.com. Any heading, caption, or section title contained in this Agreement is inserted only as a matter of convenience, and in no way defines or explains any section or provision hereof.

Please be advised that this Agreement contains provisions that govern how claims you and we have against each other are resolved.

You hereby affirm that you are over the age of eighteen (18), otherwise if you are under 18 years of age then you may not use the Service. You represent and warrant that you have the full right, power, and authority to enter into and perform this Agreement without the consent or approval of any third party.

1   Changes

We reserve the right to, at any time, with or without cause:

- change the terms and conditions of this Agreement and modify the Service,

- terminate or deny your access or use of the Service.

Any changes we make will be effective immediately upon our making such changes available on our Service. You agree that your continued use of our Service after such changes constitutes your acceptance of the changes. Be sure to return to this page periodically to ensure familiarity with the most current version of this Agreement.

2   Use of the Service

To use the Service in full capacity, you need to register and create an account at Indie Solver. We reserve the right to decline to provide the Service to any person for any or no reason. When and by registering with Indie Solver, you agree to provide accurate and complete information (including your e-mail address) and update it to keep it accurate and complete at all times. You acknowledge that if any information provided by you is untrue or incomplete, we reserve the right to terminate your use of the Service. By providing us with your contact information, you consent to our use of this information to send you Service-related notices.

You are solely responsible for the activity that occurs on your account. You must keep your account credentials (including username and password) secure at all times. You may not share your account with any third parties without Indie Solver's prior written consent. You must notify Indie Solver immediately of any breach or suspected breach of security or unauthorized use of your account. Indie Solver will not be liable for any losses caused by any unauthorized use of your account.

3 Rules

Improper use of the Service may result in termination of your access to and use of the Service, and/or civil or criminal liabilities. You agree to use the Service in accordance with all applicable laws.

You may:

- use the Service on one or several computers,

- use solutions generated by the Service for any purposes you want because you are granted the rights to do so by the Agreement;

- use postprocessed results and analytics generated by the Service such as figures and tables for any purposes you want because you are granted the rights to do so by the Agreement;

You may not:

- Disclose your password and API tokens to any third party or permitting any third party to access your account,

- Copy, reproduce, resell, rent, lease, transfer, republish, create a derivative work of, reverse engineer, decompile, offer or distribute in any way (including "mirroring") any part of the Service unless expressly permitted or required by law or expressly provided in this Agreement or otherwise agreed to by us in writing;

- Misrepresent your affiliation with a person or entity, hiding or attempting to hide your identity;

- Transmit any trade secret or other material, non-public information about any person, company, or entity without the authorization to do so;

- Remove any copyright, trademark, or other proprietary rights notices contained in or on the Service;

- Perform any network monitoring activities such as package decoding, displaying and sniffing of any data packets generated with the use of the Service and not intended for you.

4 Claims, Damages and Losses

Reliance on any information provided by Indie Solver or the Service is solely at your own risk. You agree that you, and not Indie Solver, are solely responsible for any claims, damages, losses, costs, and other expenses that arise directly or indirectly out of or from your use of the Service or this Agreement.

5 Intellectual Property

5.1 Your Rights

Subject to the terms and conditions of this Agreement, you are hereby granted a non-transferable license to access and use the Service for your business purposes. **You are granted the rights to use and modify solutions of your optimization problems generated by the Service for any purpose you want.** Indie Solver reserves all rights not expressly granted herein in the Service.

5.2 Our Rights

- Customer Data. You expressly grant, and you represent and warrant that you have all rights necessary to grant, to Indie Solver, a royalty-free, fully paid-up, transferable, perpetual, irrevocable, non-exclusive, worldwide license to use, distribute, modify, publically display and create derivative works of any information, data, materials, or content you provide to Indie Solver ("Customer Data") **for the purposes** of providing the Service and its further development and maintenance.

- Name and Logo. You expressly grant, and represent and warrant that you have all rights necessary to grant, to Indie Solver, a royalty-free, fully paid-up, perpetual, irrevocable and non-exclusive worldwide license to modify, publically display, publically perform your name, logo, or any other identifying words to identify you as a customer of Indie Solver or for marketing and publicity purposes.

- Feedback and Improvements. By submitting any comments, suggestions, feedback, or ideas about the Service ("Ideas"), you agree that your disclosure is gratuitous, unsolicited and without restriction and that we are free to use the Idea without any additional compensation to you, and/or to disclose the Idea on a non-confidential basis or otherwise to anyone. You further acknowledge that, by acceptance of your submission, Indie Solver does not waive any rights to use similar or related ideas previously known to Indie Solver, or developed by its employees, or obtained from sources other than you.

5.3 Proprietary Rights

The Service is operated by Indie Solver, and the Service (and any intellectual property and other rights relating thereto) is and will remain the property of Indie Solver. The Service is protected by the European Union and international copyright, trademark, and other laws, and you acknowledge that these rights are valid and enforceable. Except as set forth in this Agreement, you may not copy, reproduce, republish, upload, post, modify, adapt, translate, transmit, distribute, sub-license, sell, reverse engineer, decompile, or disassemble any part of the Service without our prior written permission. The Service may be used solely (a) to the extent permitted in this Agreement or (b) as expressly authorized in writing by Indie Solver or, if so indicated in writing by Indie Solver. Use of the Service for any other purpose is strictly prohibited. You acknowledge that you do not acquire any ownership rights by using the Service. The trademarks, logos, and service marks displayed on the Service (collectively, the "Indie Solver Trademarks") are the registered and unregistered trademarks of Indie Solver. Nothing contained in this Agreement or the Service should be construed as granting, by implication, estoppel, or otherwise, any license or right to use any Indie Solver Trademark(s) without the express written permission of Indie Solver.

6 Services

You acknowledge that you are responsible for paying all fees due for the paid version of the Service. Otherwise, Indie Solver will suspend your access to the paid version of the Service. Both paid and free subscriptions may contain bugs and other problems.

7 Third-Party Links

We do not warrant and will not have any liability or responsibility for any third-party materials or links available on the Services websites.

8   Termination

Indie Solver reserves the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Service, or any part or portion thereof, with or without notice to you. You agree that we shall not be liable to you or to any third party for any modification, suspension, or discontinuance of the Service, or any part of portion thereof.

9   Disclaimers

THE SERVICE IS PROVIDED "AS IS" AND "WITH ALL FAULTS" AND WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, ACCURACY, FITNESS FOR A PARTICULAR PURPOSE, COMPLETENESS, MERCHANTABILITY, ANY WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE, AND ANY WARRANTIES THAT THE SERVICE IS CURRENT AND/OR UP-TO-DATE ARE HEREBY EXPRESSLY DISCLAIMED TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW. THERE IS NO WARRANTY, REPRESENTATION, OR GUARANTEE THAT THE SERVICE, OR YOUR USE OF THE SERVICE, WILL BE UNINTERRUPTED, ACCURATE, COMPLETE, CURRENT, RELIABLE, SECURE, ERROR-FREE, OR THAT ANY PROBLEMS WILL BE CORRECTED, OR THAT THE SERVICE, OR ANY INFORMATION, SOFTWARE, OR OTHER MATERIAL ACCESSIBLE FROM THE SERVICE, IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. WE DO NOT WARRANT, GUARANTEE, OR MAKE ANY REPRESENTATION REGARDING THE USE OF, OR THE RESULTS OF THE USE OF, THE SERVICE AND YOU ASSUME ALL RESPONSIBILITY AND RISK FOR YOUR USE OF THE SERVICE, AND YOUR RELIANCE THEREON.

10   Limitation of Liability

NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY OF ANY KIND, NEITHER INDIE SOLVER NOR ANY OF ITS LICENSORS, SPONSORS, AGENTS, SUCCESSORS, OR ASSIGNS, NOR OUR OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, OR OTHER REPRESENTATIVES, ARE RESPONSIBLE OR LIABLE FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, SPECIAL, PUNITIVE OR OTHER INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF PROFITS, LOST SAVINGS, OR LOSS OF DATA) OR LIABILITIES UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY ARISING OUT OF OR RELATING IN ANY MANNER TO THE SERVICE, AND/OR ANY LINKED WEBSITE, WHETHER OR NOT WE HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR LIABILITIES. INDIE SOLVER'S MAXIMUM AGGREGATE LIABILITY SHALL NOT EXCEED TWO HUNDRED DOLLARS ($200). NEITHER INDIE SOLVER NOR ANY OF ITS LICENSORS, SPONSORS, AGENTS, SUCCESSORS, OR ASSIGNS, NOR OUR OR THEIR DIRECTORS, OFFICERS, EMPLOYEES, CONSULTANTS, OR OTHER REPRESENTATIVES WILL HAVE ANY LIABILITY TO YOU FOR ANY DAMAGES, EXPENSES, OR OTHER LIABILITY INCURRED BY YOU AS A RESULT OF ANY INACCURACY, INCOMPLETENESS, OR MISREPRESENTATION OF ANY INFORMATION, CONTENT, POSTINGS, OR SUBMISSIONS PROVIDED OR POSTED ON THE SERVICE BY THIRD PARTIES. SOME COUNTRIES AND STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN WARRANTIES AND/OR LIABILITIES, SO CERTAIN OF THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

11 Indemnification

You (and also any third party for whom you operate an account or experiment on the Service) agree to fully indemnify, defend (at Indie Solver's request), and hold Indie Solver, our licensors, suppliers, agents, successors, and assigns, and our and their directors, officers, employees, consultants, and other representatives harmless from and against any and all claims, damages, losses, costs (including reasonable attorneys' fees), and other expenses that arise directly or indirectly out of or from: (a) your breach of this Agreement; (b) any allegation that any Customer Data or other materials you submit to us or transmit to the Service infringe, misappropriate, or otherwise violate the copyright, patent, trademark, trade secret, or other intellectual property or other rights of any third party; (c) your activities in connection with the Service or other websites to which the Service is linked; (d) your negligence or willful misconduct; (e) your use of the results, content, data, or information provided via the Service; (f) any service or product offered by you in connection with or related to your use of the Service; and/or (g) your violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental and quasi-governmental authorities, including, without limitation, all regulatory, administrative and legislative authorities.

12 Jurisdictional Issues

Indie Solver is operated from France. Indie Solver makes no representation that it operates (or is legally permitted to operate) in all geographic areas, or that the Service is appropriate or available for use in other locations. If you choose to access the Service, you agree and acknowledge that you do so on your own initiative and at your own risk, and that you are solely responsible for compliance with all applicable laws. If you do not want your Customer Data transferred to be processed or stored in France, you should not use the Service.

13 Dispute Resolution

The parties shall use their best efforts to settle any dispute, claim, question, or disagreement directly through good-faith negotiations, which shall be a precondition to either party initiating a lawsuit or arbitration. Except for disputes relating to Indie Solver's intellectual property (such as trademarks, domain names, trade secrets, copyrights, and patents), all claims arising out of or relating to this Agreement and your use of the Service shall be finally settled by binding arbitration administered by the French Arbitration Association ("AFA") in accordance with the provisions of its Arbitration Rules and of its supplementary procedures for consumer-related disputes, excluding any rules or procedures governing or permitting class actions. The parties further agree that any arbitration shall be conducted in their individual capacities only, and not as a class action or other representative action.

You agree that any claim you may have arising out of or related to your relationship with Indie Solver and this Agreement must be filed within 3 months after such claim arose; otherwise, your claim is permanently barred.

This Agreement and your relationship with the Indie Solver shall be governed by, and construed and interpreted in accordance with, the laws of the French Republic without regard to its conflict of laws principles. The parties irrevocably consent to bring any action to enforce this Agreement in the federal or state courts located in Paris, France. You consent to the exclusive jurisdiction of the federal or state courts located in Paris, France.