

# TERMS OF SERVICE

These are the Terms and Conditions (“Terms”) governing the use of a proprietary online software offering (defined below as the “Medex Service”) from Medex Forensics Inc. (“Medex”), to which You subscribe. Your access to and use of the Medex Service is conditioned on Your acceptance of and compliance with these Terms. If You are using the Medex Service for an organization, You are agreeing on behalf of that organization. By installing, accessing or using the Medex Service, You agree to be bound by these Terms. If You disagree with any part of these Terms, then You may not access or use the Medex Service.

Your access to and use of the Medex Service is also conditioned on Your acceptance of and compliance with Medex’s Privacy Policy. The Privacy Policy describes our policies and procedures on the collection, use and disclosure of Your personal information when You use the Medex Service or any of our Websites, and tells You about Your privacy rights and how the law protects You. Please read Our Privacy Policy carefully before using Our Service.

1. **Scope.** These Terms apply to all users who access or use the Medex Service (each, a “User”). The following capitalized words will have the meaning below; other capitalized words used in these Terms are defined in the context used.
  - (a) **Customer (or “You” or “Your”)** means the person or entity registering for a Subscription on a Website.
  - (b) **Customer Data** means all of the different forms of data that Customer provides to Medex, either directly or through input into or derived from use of the Medex Service, including but not limited to video and other digital files.
  - (c) **Documentation** means the technical and user documentation for the Medex Service, located at [app.medexforensics.com](http://app.medexforensics.com), which is incorporated herein by reference.
  - (d) **IP Rights** means any patent, trade secret, copyright, and trademark rights applied for and/or existing in the world.
  - (e) **Medex Service** means the media forensics functionality provided through online access to a Website, comprised of content, Software, Documentation, user interfaces, third party code, and API’s.
  - (f) **Professional Services** means training, implementation, consulting, or other services related to the Medex Service, which Customer orders from Medex from time to time during the Term.
  - (g) **Privacy Policy** means Medex’s official Privacy Policy document located at [medexforensics.com/privacy-policy](http://medexforensics.com/privacy-policy), which is incorporated herein by reference.
  - (h) **Seat** means a purchased right for one concurrent User to exercise the License granted in Section 4 below.
  - (i) **Services** means, collectively and individually, the Professional Services and the Medex Service.
  - (j) **Software** means all software provided by Medex as part of the Medex Service, which is installable on a Customer computer to be used in conjunction with the Medex Service.
  - (k) **Subscription** means a pre-paid right granted to Customer under these Terms to access and use the Medex Service for the duration of the Subscription Term.
  - (l) **Subscription Term** means the period of time pursuant to these Terms under which the Medex Services are made available to Customer to access and use.
  - (m) **Support Services** means those support and maintenance services for Medex Service which are provided by Medex under these Terms, as specified in Medex’s support terms located at [medexforensics.com/support-terms](http://medexforensics.com/support-terms) is incorporated herein by reference.

- (n) *Websites* means Medex's websites located at [medexforensics.com](http://medexforensics.com), [app.medexforensics.com](http://app.medexforensics.com), and [api.medexforensics.com](http://api.medexforensics.com), including all subdomains and sites associated with those domains, and other websites that Medex operates now and in the future.

## 2. Subscription Process and Payment.

- (a) **Registration.** The first step in acquiring a Subscription is to register on a Website for at least one (1) Seat. At this registration, Customer will submit accurate and complete billing information, including full name, address, state, zip code, telephone number, and a valid payment method and related information. In some cases, Customer may have issued a purchase order or check prior to any online registration, and in such a case, Medex will set up the account manually.
- (b) **Subscription Fees.** The Medex Service is billed on an annual, subscription basis, with the fees determined by the level to which the Customer subscribes during the registration process, pursuant to the pricing levels specified in a Website, including any fees for API use.
- **Initial Fees.** Prior to being allowed to access and use the Medex Service, Customer must pay the initial subscription fee specified at the time of registration.
  - **Increases in Capacity.** At any time during a Subscription Term, Customer may acquire more than one (1) Seat at any time during the Term. Any Subscription capacity added during a Subscription Term will be prorated in price and will coterminate with the initial Subscription.
  - **Auto Billing.** By submitting payment information at the time of registration, Customer authorizes Medex to charge fees due under these Terms to such payment method, including fees for Renewal Term. If automatic billing fails to occur for any reason, Medex will issue an electronic invoice indicating that You must make a manual payment, by a specified deadline.
  - **Renewals.** For those Customers who do not have auto billing set up with Medex, Medex will invoice Customer 60 days prior to the expiration of the then-current Subscription Term. In order to continue accessing and using the Medex Service, Customer must pay such renewal invoice prior to the next annual Subscription Term (each, a "**Renewal Term**"). For each Renewal Term, Medex may increase fees and will specify the then-current renewal fees in the invoice for such Renewal Term.
- (c) **Payments & Due Dates.** Other than the Initial Fees in Subpart (b) above, Customer must pay all fees due under these Terms within 30 days of its receipt of the invoice. Medex may charge Customer 1.5% late fees if Customer is 30 days late on a payment.
- (d) **Taxes.** Customer is responsible for all sales, use, withholding, value added tax (VAT) and other similar taxes. Domestic sales and use taxes will be included on invoices where applicable, unless Customer provides Medex with reasonable evidence of Customer's exemption from such taxes.
- (e) **Free Trials.** Medex may, at its sole discretion, offer a Subscription with a free trial based on a limited period of time, number of users, number of records, or some other measure ("**Free Trial**"). You may be required to enter your billing information in order to sign up for the Free Trial. If you do enter your billing information when signing up for the Free Trial, You will not be charged until the Free Trial has expired. On the last day of the Free Trial period, unless You cancel your Subscription, You will be automatically charged the applicable Subscription fees for the type of Subscription selected. At any time and without notice, Medex reserves the right to (i) modify the terms and conditions of the Free Trial offer, or (ii) cancel such Free Trial offer.

## 3. Subscription License.

- (a) **General Rules.** To use the Medex Service, You must (i) be at least eighteen (18) years of age; (ii) complete the registration process; (iii) provide current and accurate information; and (iv) agree to these Terms.
- (b) **License.** Subject to these Terms, Medex grants to Customer a non-exclusive, non-transferable license to use the Medex Service during a Subscription Term, in accordance with the following:
- Customer may access and use the Medex Service to perform forensic analysis on Customer Data, and to perform any other functions described in the Documentation, up to the capacity to which You have subscribed (*e.g.*, number of Seats or API calls);

- Customer may allow Users to access and use the Medex Service; provided that such access and use must be only up to the Subscription capacity purchased, for the sole benefit of Customer, and Customer must remain responsible for such Users' compliance with these Terms; and
- Where applicable, Customer may access Customer Data via the Application Programming Interface(s) provided by Medex ("API"). Any use of an API, including use of an API through a third-party product that accesses a Medex-provided API, is bound by these Terms.
- Medex grants to Customer a non-exclusive, non-transferable license during the Subscription Term to use and copy the Software and Documentation, solely in connection with Customer's use of the Medex Service.

(c) **Restrictions.** Customer will not, nor will it permit or assist Users to:

- Decompile, disassemble or reverse engineer the Medex Service or otherwise circumvent its digital protection(s);
- Copy, alter, modify, mirror, or create derivative works of the Medex Service without Medex's express written permission, except for copies that are necessary for Customer's own internal use and for backup purposes - any and all copies made by Customer are subject to these Terms and are the sole and exclusive property of Medex and must remain in the custody and control of Customer;
- Market, sell, lease, sublicense, lend, disclose, transfer, assign, grant or otherwise commercialize any interest in the Medex Service to any third-party, including use of the Medex Service in a service bureau capacity;
- Use the Medex Service in violation of any applicable laws, rules and regulations;
- Use the Medex Service to solicit the performance of any activity which infringes any IP Rights; and
- Use the Medex Service to transmit, or otherwise distribute any defamatory or illegal content.

(d) **Passwords.** You are responsible for keeping your account name and password confidential. You are also responsible for any account that You have access to. You agree to notify us immediately of any unauthorized use of Your account(s). We are not responsible for any losses due to stolen or hacked passwords.

(e) **Customer Data.** Customer grants to Medex the right to use the Customer Data solely for purposes of performing under these Terms. During a Subscription Term, Customer may export its Customer Data as allowed by functionality within the Medex Service. Customer grants Medex a non-exclusive, royalty-free license to internally and externally use any aggregated and/or anonymized statistical data regarding the performance of the Medex Service, including its processing of Customer Data, in a manner that does not allow for the identification of Customer or disclosure of Customer Data.

#### 4. **Term and Termination.**

(a) **Term.** These Terms continue until expiration of the Subscription Term or if terminated as provided below.

(b) **Renewals.** These Terms will automatically renew, unless either party provides written notice of non-renewal to the other party no less than 30 days prior to the expiration of the then-current Subscription Term.

(c) **Cancellation.** You are solely responsible for the proper cancellation of your account. You may cancel your account at any time by contacting Medex or by closing Your account through a Medex Website. An email or phone request to cancel Your account is not considered cancellation until a cancellation confirmation has been sent to You by Medex. You will not be charged for renewal fees after cancellation. There is no cancellation fee, other than forfeiture of any prep-paid, unused fees.

(d) **Termination for Material Breach.** If either party is in material breach of these Terms, the other party may terminate these Terms at the end of a written 10-day notice/cure period, if the breach has not been cured.

(e) **Suspension.** Medex may, after giving Customer reasonable notice, temporarily suspend Customer's access to the Medex Service if Customer is 30 days or more overdue in its payment of any fees; or Medex believes in good faith that, in using the Medex Service, Customer has violated, or will violate, a law. Abuse or excessively frequent requests to the Medex Service via an API may result in the temporary or permanent suspension of your access to an API. Medex may, in its sole discretion, determine abuse or excessive usage of an API. We reserve the right at any time to modify or discontinue, temporarily or permanently, your access to an API (or any part thereof) with or without notice.

(f) **Return of Customer Data.** In the event of cancellation or termination your account and all users associated with your account will be immediately disabled, and your account and information cannot be recovered once the account is closed. All account information will be deleted upon cancellation or termination.

(g) **Return of Medex Property upon Termination.** Upon termination of this Agreement for any reason, Customer must pay Medex all unpaid, invoiced amounts, and destroy or return any Confidential Information of Medex. Upon Medex's request, Customer will confirm in writing its compliance with this destruction or return requirement.

## 5. Services.

(a) **Support.** Medex will provide Support Services under the terms of the Support Policy. At a minimum, Support Services include free email support and free standard bug support and maintenance for all Users. Additional Support Services may be provided for a fee, as specified in the Support Policy.

(b) **Professional Services.** Subject to Customer's payment of required Professional Services Fees, if any, Medex will provide Professional Services to Customer in connection with the Medex Service, subject in all respects to these Terms. In such cases, Customer and Medex will document such Professional Services with a signed Statement of Work that incorporates these Terms. Upon mutual agreement, Customer may order Professional Services with a purchase order; provided, however, Medex rejects any non-commercial terms included in any such purchase order which are additional to or different from these Terms.

## 6. Proprietary Rights; Confidentiality; Personal Data; Data Security.

### (a) Proprietary Rights.

- Medex and its licensors retain ownership of the Medex Service and its associated design, software, documentation, processes, algorithms, user interfaces, and all IP Rights embodied therein ("**Medex Technology**"). Customer may not remove or modify any proprietary marking or restrictive legends from Medex Technology. Medex may adopt from time to time such mechanical or electronic methods as Medex deems necessary to control the unauthorized use or distribution of the Medex Service and associated Documentation. Medex reserves all rights not expressly granted in these Terms.
- Between Customer and Medex, Customer owns all Customer Data.

### (b) Mutual Confidentiality.

- **Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party ("**Discloser**") to the other party ("**Recipient**"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure ("**Confidential Information**"). Customer's Confidential Information includes, without limitation, the Customer Data. Medex's Confidential Information includes, without limitation, these Terms, the Medex Technology, and the pricing for the Medex Service.
- **Protection of Confidential Information.** A Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) and will not disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this Agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information to those of its employees and contractors who need such access for purposes consistent with this Agreement and who have signed confidentiality agreements with Recipient no less restrictive than the terms of this Agreement.
- **Exclusions.** Confidential Information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third-party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order but will provide Discloser with advance notice to seek a protective order.

(c) **Protection of Personal Data.** Customer is the "Data Controller" of any personal data processed while using the Medex Service ("**Personal Data**"), and must therefore comply with its legal obligations relating to the processing of personal data.

### (d) Data Security.

- **Security Measures.** In order to protect Customer Data stored on Medex systems, Medex will (i) implement and maintain all reasonable security measures appropriate to the nature of the Customer Data including without limitation, technical, physical, administrative and organizational controls, and will maintain the confidentiality, security and integrity of such Customer Data; (ii) implement and maintain industry standard systems and procedures for detecting, preventing and responding to attacks, intrusions, or other systems failures and regularly test or otherwise monitor the effectiveness of the safeguards' key controls, systems, and procedures; (iii) designate an employee or employees to coordinate implementation and maintenance of its security measures; and (iv) identify reasonably foreseeable internal and external risks to the security, confidentiality and integrity of Customer Data that could result in the unauthorized disclosure, misuse, alteration, destruction or other compromise of such information, and assess the sufficiency of any safeguards in place to control these risks.
- **Notice of Data Breach.** If Medex believes, in its reasonable, good-faith discretion, that Personal Data, if any, stored on Medex systems, has been accessed, disclosed, or acquired through Medex's fault, Medex will alert Customer of any such data breach within two business days after learning of the data breach, and immediately take such actions as may be necessary to preserve forensic evidence and eliminate the cause of the data breach. Medex will give highest priority to promptly correcting any data breach and devote such resources as may be required to accomplish that goal. Medex will provide Customer with information reasonably necessary to enable Customer to understand the nature and scope of the data breach. To the extent that, in its sole reasonable discretion, Customer determines to be necessary, Customer may provide notice to any or all parties affected by the data breach. In such case, Medex will consult with Customer in a timely fashion regarding appropriate steps required to notify third parties.

## 7. Warranties.

- Medex Services Warranty.** Medex warrants that: (i) the Medex Service will contain the features and functions contained in the Documentation; and (ii) the functionality or features of the Medex Service may change but will not materially decrease during any Subscription Term. AS CUSTOMER'S EXCLUSIVE REMEDY AND MEDEX'S ENTIRE LIABILITY UNDER THIS WARRANTY, Medex will fix or replace the non-conforming portion of the Medex Service within a commercially reasonable period of time after Customer notifies Medex of the breach. This warranty does not apply: (1) if the Medex Service is not used in accordance with Documentation, or (2) for any other cause that is not proximately caused by the Medex Service.
- Embedded Terms Warranty.** Medex reserves the right, in its sole discretion, to change, modify, add, or remove portions of the Terms, at any time. Amendments or changes to these Terms won't be effective until revised Terms are posted on the Website. Medex warrants that these Terms, and those terms incorporated by reference into these Terms, may change, but will not materially degrade Customer's rights during the term hereof. It is Your responsibility to check the Terms on a Medex Website periodically for changes. Your continued use of the Medex Service following the posting of changes will mean that you accept and agree to the changes.
- DISCLAIMER. MEDEX DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. WHILE MEDEX TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE MEDEX, MEDEX DOES NOT GUARANTY THAT MEDEX CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT MEDEX MAY NOT BE ERROR FREE AND USE MAY BE INTERRUPTED.**

## 8. Indemnities.

- Medex Indemnity.** Medex will defend or settle any third-party claim against Customer to the extent such claim alleges that Medex Service (and its underlying technology) infringes or misappropriates its IP rights; provided that Customer promptly notifies Medex of the claim in writing, cooperates with Medex in the defense, and allows Medex to solely control the defense or settlement of the claim.
  - Medex will pay or reimburse Customer any costs incurred in performing its obligations above, and any Medex-negotiated settlement amounts or court-awarded damages.
  - If such a claim appears likely to prevail on its merits, in Medex's sole reasonable discretion, then Medex may modify the Medex Service, procure the necessary rights, or replace it with a functional equivalent.
  - If Medex determines that none of the above options are commercially feasible, then Medex may terminate these Terms, and will refund to Customer any prepaid and unused Subscription fees.

- Medex has no obligation under this Section to the extent of any claim arising from: (i) Medex's compliance with Customer's specifications, where there would be no infringement but for these specifications; (ii) Customer's combination of the Medex Service with other technology or aspects, where the infringement would not occur but for the combination; (iii) use of Customer Data; (iv) Customer's alteration, modification, conversion or reverse engineering of the Medex Service; or (v) Customer's use of the Medex Service in violation of these Terms.

**THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES FOR INFRINGEMENT CLAIMS.**

- (b) Customer Indemnity.** You agree to defend, indemnify and hold Medex harmless from any and all demands, loss, liability, claims or expenses (including reasonable attorneys' fees) made against Medex by any third party due to or arising out of or in connection with Your breach of these Terms.

**9. Limitations on Liability.**

- (A) EXCLUSION OF DAMAGES. EXCEPT FOR CUSTOMER'S VIOLATION OF SECTION 3, NEITHER PARTY IS LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OF OR UNAUTHORIZED ACCESS TO DATA OR INFORMATION, AND LOST PROFITS).**
- (B) TOTAL LIMIT ON LIABILITY. EXCEPT FOR INDEMNITY OBLIGATIONS, ACTS OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR FOR CUSTOMER'S VIOLATION OF THE LICENSE, A PARTY'S TOTAL LIABILITY FOR ALL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) WILL NOT EXCEED THE GREATER OF THE AMOUNT PAID OR PAYABLE BY CUSTOMER UNDER THESE TERMS WITHIN THE 12 MONTH PERIOD PRIOR TO THE EVENT THAT GAVE RISE TO THE CLAIM.**

**10. General.**

- (a) Governing Law and Forum.** These Terms are governed by the laws of the State of New York (without regard to its conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of these Terms. You agree to the personal jurisdiction by and venue in the state and federal courts in New York County, New York, and waive any objection to such jurisdiction or venue.
- (b) Entire Agreement.** These Terms constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter.
- (c) No Assignment.** Customer may not assign or transfer Terms, in whole or in part, to a third-party without Medex's prior written consent.
- (d) Enforceability.** If any provision of these Terms is found to be invalid or unenforceable, the other terms remain in effect.
- (e) Force Majeure** Neither party is liable for events beyond their reasonable control, including without limitation force majeure events, due to contingencies beyond its reasonable control whether directly or indirectly, including but not limited to, fire, explosion, strike, freight embargo, act of God, or of war, civil disturbance, act of any government or any agency or official thereof, labor shortage, transportation contingencies, severe weather, default of manufacturer or supplier as a subcontractor, quarantine or restriction, epidemic or catastrophe, or other conditions beyond the control of such party.
- (f) Money Damages Insufficient.** Any breach by a party of these Terms or a violation of IP Rights could cause irreparable injury or harm to the other party. The other party may seek injunctive relief to stop such breach or violation or to prevent any future breach or violation.
- (g) No Additional Terms.** Medex rejects any additional or conflicting terms of a Customer purchasing document.
- (h) Survival, CISG.** Any terms that by their nature survive termination of these Terms for a party to assert its rights and receive the protections of these Terms, will survive. The UN Convention on Contracts for the International Sale of Goods does not apply.
- (i) Relationship of the Parties.** The parties are independent contractors with respect to each other.

- (j) Export Control Laws.** Customer will not import, export, re-export, or transfer, directly or indirectly, any part of Medex or any underlying information or technology, except in full compliance with all United States, foreign and other applicable laws and regulations.
- (k) Notices.** Unless otherwise agreed to by the Parties, all notices required under these Terms will be deemed effective when received and made in writing by either (i) registered mail, (ii) certified mail, return receipt requested, or (iii) overnight mail, addressed and sent to the address on the Registration Page.
- (l) No Waiver.** Either party's failure to exercise or enforce any right or provision of the Terms shall not constitute a waiver of such right or provision.
- (m) Questions.** If you have any questions or concerns about the Terms, please email us at [support@medexforensics.com](mailto:support@medexforensics.com).