

Terms of Service

Udex Software

Last Updated: March 11,2020

YOUR USE OF THE PROPRIETARY UDEX SERVICE AND SOFTWARE AND UDEX APPS OFFERED AT UDEXONE.COM, UDEX.US, 360FEEDBACK.UDEX.US, CARESHARE360.COM, EZREVIEW.COM, UDEXSOFTWARE.COM, UDEX360.COM, OR APP STORES (THE “SERVICE”), IS SUBJECT TO THESE TERMS OF SERVICE. IN ORDER TO USE THE SERVICE, YOU MUST AGREE TO BE BOUND BY THESE TERMS OF SERVICE (“AGREEMENT”) WITH UDEX SOFTWARE LLC (“UDEX”). IF YOU DO NOT AGREE TO ALL TERMS OF THIS AGREEMENT, YOU MAY NOT USE THE SERVICE.

The Udex Privacy Policy is incorporated herein by reference. This Agreement governs your use of the Service however accessed, including via an internet browser, smartphone, tablet, or other mobile device. If you sign up for the Service on behalf of a Customer, you represent that you are duly authorized to represent the entity and accept the terms of this Agreement on behalf such entity, and any references to “you” in this Agreement refer to such entity and all its employees, consultants, and agents. You are responsible for all activity on the Service that occurs under your account.

Section 1. Term and Termination

- 1.1 This Agreement will remain in effect until all subscriptions granted in accordance with this Agreement have expired or this Agreement is terminated by you or Udex (the “Term”). If you elect to use the Service for a free trial period, and do not purchase a subscription before the end of such period, this Agreement will expire at the end of the free trial period.
- 1.2 Subscriptions purchased by you commence on the start date specified upon payment and continue for the subscription term selected at the time of payment. Subscriptions automatically renew, as described in Section 4.1.
- 1.3 You are solely responsible for the proper cancellation of your subscription. You may cancel your subscription at any time by emailing admin@udexone.com or calling 1-888-217-7770, or through an App Store according to the respective store’s terms.
- 1.4 Udex may terminate this Agreement at any time in the event you materially breach this Agreement and do not cure such breach within 30 days of Udex providing you with written notice by mail or email. However, in the event of your nonpayment (including if your credit card cannot be charged), Udex may suspend your access to the Service upon any such nonpayment and may terminate this Agreement, if such breach is not remedied within 30 days of notice by Udex to you. Notwithstanding the foregoing, Udex may immediately suspend or terminate your access to the Service without liability if it believes that you are in violation of Sections 3.1, 3.5 or 12 of this Agreement, or if you are otherwise in violation of this Agreement. Udex may also downgrade, suspend or terminate your access to the Service without liability, after providing you with 30 days’ advance written notice, if (a) you fail to agree to material modifications of this Agreement pursuant to Section 2.1 below, or (b) you do not log in to or otherwise use the Service for a period of 180 days or more if you have a paid account, and for a period of 60 days or more if you have a free account. For instances other than non-payment or violation of

Section 3.1, in the event you cancel your subscription, or this Agreement is terminated by Udex or you, Udex will refund to you any prepaid fees covering any period of the term remaining after the date of termination for all subscriptions. However, no refund will be granted for the then current month. Notice via email by Udex to you will be sent to the email address you provided. If Services are purchased through an App Store, the terms of refund associated with a respective App Store shall prevail.

- 1.5 In the event your subscription is terminated, other than in instances where it is terminated by Udex for your nonpayment or violation of Sections 3.1 or 12, you will continue to have the ability to download the information provided, inputted or uploaded to the Service by you or on your behalf (“Data”) for 30 days after the effective date of expiration or termination. After such 30-day period or if your subscription is terminated due to your nonpayment or violation of Section 3.1, Udex shall have no obligation to maintain any Data and shall thereafter, unless legally prohibited from doing so, have the right to delete all of your Data contained in Udex’ systems or otherwise in its possession or under its control.

Section 2. Modification of Service or this Agreement

- 2.1 The Service may be made available in free or paid versions at varying levels. Not all features and functionality of the Service may be available in each version or level. Udex reserves the right, in its sole discretion, to modify, add, or remove portions and/or functionality of the Service on a temporary or permanent basis, without liability to you or any third party.
- 2.2 Udex may modify, add, or remove portions of this Agreement at any time. In the event Udex determines it is necessary to make a material modification to this Agreement, you will be notified of such change and asked to agree to such modified Agreement. Note, however, that your use of the Service after modifications to the Agreement become effective constitutes your binding acceptance of such changes. You may review the most current version of this Agreement on the Udex website.
- 2.3 If you are dissatisfied with the terms of this Agreement or any modifications to this Agreement or the Service, you agree that your sole and exclusive remedy is to terminate this Agreement and discontinue any use of the Service.

Section 3. Usage Rights; Restrictions; Support

- 3.1 During the Term, Udex grants you a limited, non-transferable, non-sublicensable, non-exclusive right to access and use the hosted software products and related documentation included in the Service and all modifications and/or enhancements to any of the foregoing (“Software”) via a web browser or other device owned or controlled by you for your internal business use. Nothing in this Agreement obligates Udex to deliver or make available any copies of computer programs or code from the Software to you, whether in object code or source code form. You agree to use the Service only in compliance with all applicable local, state, national, and international laws, rules and regulations (“Applicable Law”). You shall not, and shall not agree to, and shall not authorize, encourage or permit any third party to:
 - a) use the Service to upload, transmit or otherwise distribute any content that is unlawful, defamatory, harassing, abusive, fraudulent, obscene, threatening, hateful, contains viruses, or is otherwise objectionable as reasonably determined by Udex;

- b) use the Service for any fraudulent or inappropriate purpose;
 - c) attempt to decipher, decompile, delete, alter or reverse engineer any of the Software;
 - d) duplicate, make derivative works of, reproduce or exploit any part of the Service without express written permission of Udex;
 - e) use any robot, spider, other automated device, or manual process to monitor or copy any content from the Service other than copying or exporting of the Data as contemplated in the documentation; or
 - f) rent, lease, distribute, or resell the Software, or use the Software for developing a competitive solution (or contract with a third party to do so), or remove or alter any of the logos, trademark, patent or copyright notices, confidentiality or proprietary legends or other notices or markings that are on or in the Software or displayed relating to the Service.
- 3.2 Udex shall: (i) provide you with basic support in connection with your use of the Service at no additional charge, and with upgraded support if purchased separately, (ii) use commercially reasonable efforts to make the Service available 24 hours a day, 7 days a week, except for (a) planned downtime (which Udex shall schedule to the extent practical during weekend hours from 7:00pm Friday to 2:00am Monday Pacific Time), or (b) any unavailability caused by circumstances beyond Udex' reasonable control, including acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Udex employees), Internet service provider failures or delays, or denial of service attacks or other cyber-attacks, and (iii) provide the Service only in accordance with Applicable Law.
- 3.3 Udex shall maintain commercially reasonable administrative, physical, and technical safeguards for protection of the Service, and the security of your Data. Udex shall not (a) disclose your Data except as compelled by Applicable Law or as you expressly authorize in writing, or (b) access your Data except to provide the Service and prevent or address service or technical problems, or at your express request relating to customer support matters. In the event we are compelled by Applicable Law to disclose your Data, we will provide you with notice thereof, (in advance, if possible) if permitted by Applicable Law.
- 3.4 You are solely responsible for your Data, and all uses of your Data that occur through your account.
- 3.5 If you integrate with Udex using our API(s), you must use efficient programming, which will not cause too many requests to be made in too short a period, as determined solely by Udex. If this occurs, Udex reserves the right to throttle your API connections, or suspend or terminate your Udex account.

Section 4. Payment Terms

- 4.1 Your subscription to the Service renews automatically for the same term selected upon initial payment (e.g., month-to-month, annual, etc.), or as specified in respective App Stores. You may change your subscription term at any time by contacting Udex using one of the methods set forth in the Contact Information section below. If you are paying by credit card, your credit card will be charged for monthly subscriptions in advance, or once each year in advance for annual subscriptions. Udex will email you a receipt when your credit card has been charged, or you will receive a receipt through the respective App Store. If your card cannot be charged, Udex or the

respective App Store will notify you, and you will need to update your payment information. In the event you do not update your payment information within 15 days of Udex' notice, your access to the Service may be suspended and you will need to update your card information to resume use of the Service. There will be no refunds or credits for partial months of service.

- 4.2 Annual subscription pricing requires a one-year minimum commitment. If you cancel your subscription, or your subscription is suspended for nonpayment, before the end of the one-year commitment period, you will no longer qualify for annual subscription pricing and you will be charged the difference between the monthly or full retail pricing (whichever is greater) and annual commitment pricing for the number of months your subscription was active. Notwithstanding the foregoing, if you subscribed through App Stores the cancellation terms within the respective App Stores shall prevail.
- 4.3 All fees are exclusive of all taxes and duties imposed by governing authorities. Other than sales taxes which Udex or the App Stores according to their terms, may be required to collect from you and remit to appropriate taxing authorities, you alone are responsible for payment of all such taxes or duties.
- 4.4 Udex may at any time, upon notice of at least 30 days, or a longer period if required by Applicable Law or according to the terms of the respective App Stores, change the price of your subscription or any part thereof, or institute additional charges or fees. Price changes and implementation of additional charges for annual subscription period will come into effect for any subsequent annual subscription periods, and to all new subscribers after the effective date of the change. If you do not agree to any such price changes, then you must cancel your subscription and stop using the Service prior to the commencement of the renewal subscription period for which the price change applies.

Section 5. Intellectual Property Rights

- 5.1 As between the parties, Udex owns and shall retain all right, title, and interest in and to (a) the Software and the Service, including all intellectual property rights, and (b) transactional and performance data related to your use of the Service. Udex may collect, use, and disclose all such transactional and performance data for its business purposes (including software use optimization and product marketing) provided that such use does not reveal your identity, any of your confidential information or any personally identifiable information that belongs to you or your employees.
- 5.2 You retain all right, title, and ownership interest in and to your Data. Udex has no right, title or interest in any personally identifiable information contained in or related to your Data.
- 5.3 You have no obligation to give Udex any suggestions, enhancement requests, recommendations, comments or other feedback ("Feedback") relating to the Service. To the extent you provide any Feedback to Udex, Udex may use and include any such Feedback to improve the Service or for any other purpose. Accordingly, if you provide Feedback, you agree that Udex shall own all such Feedback and Udex and its affiliates, licensees, clients, partners, third-party providers and other authorized entities may freely use, reproduce, license, distribute, and otherwise commercialize the Feedback in the Service or other related technologies, and you hereby assign, irrevocably, exclusively and on a royalty-free basis, all such Feedback to Udex.

- 5.4 From time to time during the Term, Udex may develop, author or prepare custom documents, designs, computer programs, computer documentation and other tangible materials (“Deliverables”), in each case pursuant to a statement of work executed by you and Udex. Udex shall own and retain all right, title, and interest in and to such Deliverables and hereby grants to you a limited, non-transferable, non-sublicensable, non-exclusive license for you to use such Deliverables for your internal use during the Term. Udex may reuse any Deliverables provided that such use does not reveal your identity or your confidential information.

Section 6. Publicity

- 6.1 During the Term, Udex may disclose your name as a customer of Udex and/or subscriber of the Service, together with any User Content or other comments or reviews of Udex or the Service that you post on or through the Service, if any, and you hereby grant Udex the right to display your name, logo, and comments or reviews, in Udex’ marketing materials and on Udex’ public website, in each case in accordance with any branding guidelines you may provide to Udex.

Section 7. User Content

- 7.1 Certain features of the Site may enable users to submit, upload, post, share, display, or transmit to other users and review sites (hereinafter “post”) user-generated content (“User Content”) and interact with others through user comment areas, review sites, message boards, direct messages, Udex’ blog, and similar user-to-user areas, as applicable. User Content also includes any comments or reviews you provide to Udex about the Service.
- 7.2 You hereby grant to Udex an irrevocable, perpetual, non-exclusive, transferable, sublicensable, royalty-free, worldwide right and license to use, reproduce, display, perform, distribute, and prepare derivative works of any User Content you post on or through the Service for any purpose and in all forms and all media, whether now known or that become known in the future, and you waive any and all claims that you may have now or may hereafter have in any jurisdiction to any moral rights and all rights of “droit moral” in your User Content, even if your User Content is altered or changed in a manner not agreeable to you. If you post User Content, you represent and warrant to Udex that you own or control all rights in and to such User Content and have the right to grant the rights above to Udex.

Section 8. Warranties and Limitation of Liability

- 8.1 Udex represents, warrants, and covenants as follows: (a) the Service will perform substantially in accordance with the technical requirements documents that are generally provided by Udex in connection with the Service (“Documentation”); and (b) any professional services performed for you by Udex will be performed in a professional and workmanlike manner, with the degree of skill and care that is required by sound professional procedures and practices.
- 8.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE LIMITED WARRANTY PROVIDED ABOVE, UDEX HEREBY DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVICE, SOFTWARE, DOCUMENTATION,

DELIVERABLES AND OTHER MATERIALS AND/OR SERVICES. UDEX DOES NOT WARRANT THAT OPERATION OF THE SERVICE WILL BE ERROR-FREE OR UNINTERRUPTED.

- 8.3 EXCEPT FOR (I) EITHER PARTY'S BREACH OF ITS CONFIDENTIALITY OBLIGATIONS (II) A PARTY'S VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (III) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS HEREUNDER, OR (IV) EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, (A) IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXCEMPLARY DAMAGES ARISING OUT OF THIS AGREEMENT, AND (B) THE AGGREGATE LIABILITY OF EITHER PARTY TO THE OTHER WITH RESPECT TO THIS AGREEMENT IS LIMITED, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, TO THE FEES COLLECTED BY UDEX FROM YOU PURSUANT TO THIS AGREEMENT IN THE SIX MONTHS PRECEDING THE EVENT FROM WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATIONS APPLY EVEN IF SUCH PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN.

Section 9. Security Breach

- 9.1 External Breach: In the event of a security breach by anyone other than your employee, contractor, or agent, upon discovery of such breach, Udex will: (a) initiate remedial actions that are in compliance with Applicable Law and consistent with industry standards; and (b) notify you of the security breach, its nature and scope, the remedial actions Udex will undertake, and the timeline within which Udex expects to remedy the breach.
- 9.2 Internal Breach: In the event of a security breach by your employee, contractor or agent, you shall have sole responsibility for initiating remedial actions and shall notify Udex immediately of the breach and steps you will take to remedy the breach.

Section 10. Indemnification

- 10.1 You agree to indemnify, defend and hold harmless Udex, and its affiliates, officers, agents, and employees from and against any costs, damages, expenses (including reasonable attorneys' fees), judgments, losses and other liabilities (including amounts paid in settlement) ("Liabilities"), incurred as a result of any third-party action, claim, demand, proceeding or suit ("Claim") to the extent arising from or connected with your use of the Software and/or Service in breach of this Agreement.
- 10.2 Udex agrees to indemnify, defend and hold harmless you, and your affiliates, officers, agents, and employees from and against any Liabilities incurred as a result of any third-party Claim to the extent arising from or connected with an allegation that your use of the Software and/or Service in accordance with this Agreement infringes the intellectual property rights of a third party. Notwithstanding the foregoing, in no event shall Udex have any obligations or liability arising from: (a) use of the Software and/or Service in a modified form or in combination with materials or software not furnished by Udex, and (b) any content, information or Data provided by you, your end users, or other third parties.
- 10.3 A party seeking indemnification hereunder shall (a) promptly notify the other party in writing of the Claim, (b) give the indemnifying party sole control of the defense of such Claim and all

negotiations for the compromise or settlement thereof (provided that if any settlement requires any action or admission by the indemnified party, then the settlement will require the indemnified party's prior consent), and (c) provide the indemnified party with all reasonable cooperation, information and assistance in connection with such Claim; provided, however, that failure by the indemnified party to provide prompt notice of a Claim, grant such sole control, and/or provide such cooperation, information and assistance, shall not relieve the indemnifying party of its obligations under this Article 10, except to the extent that the indemnifying party is materially prejudiced by such failure. The indemnified party may be represented by its own counsel, at its own expense.

Section 11. Governing Law

- 11.1 This Agreement shall be governed by and construed in accordance with the substantive laws of the State of California, without reference to conflict of laws principles. Any legal action or proceeding with respect to this Agreement must be brought in the courts sitting in Santa Clara County, California, or in the United States District Court for the Northern District of California and by its execution and delivery of this Agreement, each party accepts the jurisdiction of such courts and waives any objections based on personal jurisdiction or venue.

Section 12. Compliance with Laws; Disclaimers

- 12.1 Each Party shall comply with all Applicable Law in connection with its own activities in relation to this Agreement. The Service can be configured and used in ways that do not comply with Applicable Laws and it's your sole responsibility to monitor your employees' use and your use of the Service to ensure that such use complies with and is in accordance with Applicable Law. In no event shall Udex be responsible or liable for your failure to comply with Applicable Law in connection with your use of the Service.
- 12.2 Udex does not provide its customers with legal advice regarding compliance, data privacy or other relevant Applicable Law in the jurisdictions in which you use the Service, and any statements made by Udex to you shall not constitute legal advice.
- 12.3 You acknowledge that Udex exercises no control over your specific human resource practices implemented using the Service or your decisions as to interviews, employment, promotion, advancement, termination, notification, or compensation of any employee or authorized user of the Service. You further agree and acknowledge that Udex does not have a direct relationship with your employees and that you are responsible for all contact, questions, Data updates and collection, with your employees. In addition, you are responsible for the privacy (including adopting and posting your own privacy policies governing your treatment of your employees' Data), collection, use, retention and processing of your employees' Data, and providing any and all notices and information to your employees regarding the foregoing, in compliance with all Applicable Laws. Udex hereby disclaims all liability arising from your decisions and from harmful data or code uploaded to the Service by you and/or your employees, contractors or agents.
- 12.4 You agree that you will not, directly or indirectly, ship, transfer, transmit, export or re-export, or knowingly permit any of the foregoing with respect to the Service or Software, or any technical information about the Service or Software, to any country for which the United States Export

Administration Act, any regulation thereunder, or any similar United States law or regulation, requires an export license or other United States Government approval, unless the appropriate export license or approval has been obtained.

- 12.5 You represent and warrant that (a) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a “terrorist supporting” country; and (b) you are not listed on any U.S. Government list of prohibited or restricted parties.

Section 13. iOS Version

- 13.1 If you use the iOS version of the Service, you acknowledge the statements set forth in this Section. This Agreement is between you and Udex only, not with Apple Inc. (“Apple”), and Apple is not responsible for the Service or the functionality or content thereof. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Service. In the event of any failure of the Service to conform to any applicable warranty and if you purchased a subscription to the Service through Apple, then you may notify Apple and Apple will refund the purchase price for the relevant Service to you; and, to the maximum extent permitted by Applicable Law, Apple has no other warranty obligation whatsoever with respect to the Service. As between Apple and Udex, Udex is responsible for any claims, losses, liabilities, damages costs or expenses attributable to any failure of the Service to conform to any warranty, subject to the terms of this Agreement. Apple is not responsible for addressing any claims brought by you or any third party relating to the Service or your possession and/or use of the Service, including, but not limited to: (a) product liability claims; (b) any claim that the Service fails to conform to any applicable legal or regulatory requirement; and (c) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third-party claim that your possession and use of the Service infringes that third party’s intellectual property rights. You agree to comply with any applicable third-party terms, when using the Service. Apple, and Apple’s subsidiaries, are third party beneficiaries of this Agreement, and upon your acceptance of this Agreement, Apple will have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third-party beneficiary of this Agreement.

Section 14. General Provisions

- 14.1 Entire Agreement. This Agreement encompasses the entire agreement between you and Udex with respect to the subject matter hereof and supersedes all prior representations, agreements and understandings, written or oral. No purchase order or other form submitted by you will modify, supersede, add to or in any way vary the terms of this Agreement.
- 14.2 Modification. This Agreement may only be altered, amended or modified by a written or electronic instrument executed by both parties.
- 14.3 No Waiver. The failure of Udex to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision.
- 14.4 Severability. If any part of this Agreement is found invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall be interpreted so as to reasonably

effectuate the intention of the parties and shall not affect the validity and enforceability of any remaining provisions.

- 14.5 Survival. The provisions of this Agreement that should, by their nature, survive termination and/or expiration, shall and do survive such termination and/or expiration.
- 14.6 Assignment. You may not assign or otherwise transfer any of your rights or obligations under this Agreement without Udex' prior written consent, which consent shall not be unreasonably withheld. This Agreement shall be binding upon, and will inure to the benefit of, the parties and their respective successors and permitted assigns. Any assignment in violation of the foregoing will be null and void.
- 14.7 No Legal Advice; Reliance. No part of this Agreement is intended or shall be construed as legal advice. Udex shall not be liable for any errors or omissions in the content of this Agreement or for any actions taken in reliance thereon.

Contact Information

If you have any questions about the Service or this Agreement, you may call Udex at 1-888-217-7770 or email to admin@udexone.com, or write to:

Udex Software LLC
Attn: Legal
101 Church Street, Suite 14
Los Gatos, CA 95030

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