



Terms of Service Agreement

Terms of Service Agreement

This Terms of Service Agreement (“TOS”) is entered into by and between Trialworks LLC dba Needles (“Needles”) and the customer reflected in the signature block below or otherwise identified in the online registration associated with your account (hereinafter “you” or “Customer”).

1. GENERAL:

1.1 Needles provides each of its services set forth in your Order Form (“Services”) under the terms set forth in certain agreements with you, each of which incorporates this TOS by reference. Any reference to “this TOS” shall be interpreted to mean this TOS and any agreement in which it is incorporated.

1.2 If we license or resell certain software or services to you, you understand and agree that you may be bound by additional terms and conditions imposed under the terms of our Software License Agreement (for Needles software only) or by applicable third-party reseller’s or licensor’s license terms.

1.3 Your use of the Services constitutes your agreement to abide by the laws of the United States and of the state and country in which you reside, including, but not limited to, all intellectual property laws, tariff regulations, export controls, treaties, and international laws.

1.4 If you do not agree to abide by this TOS, you are prohibited from using the Services.

1.5 This TOS is not a complete representation of all Needles policies or the implementation of all such policies.

1.6 We may periodically change, modify, or update this TOS upon written notice to you (email notice or a pop-up in the user interface of our online Services that you must acknowledge shall constitute provision of such notice). Your continued use of the Services after we post a changed, modified, or updated TOS serves as your acceptance of those updated policies. Please refer to this TOS regularly to remain updated about our current policies.

2. RESTRICTIONS: You agree that you will NOT use the Services to:

2.1 Violate any applicable state or federal law and regulation, including, but not limited to, any copyright, trademark, patent, anti-piracy, or other intellectual property law or regulation, or encourage or enable others to violate any such law or regulation.

2.2 Transmit, distribute, post, store, link, or otherwise traffic in information, software, or material that is offensive, abusive, inappropriate, malicious, or detrimental, including, but not limited to, those that:

2.2.1 Are pornographic, obscene, fraudulent, or discriminatory, including any containing nudity, erotica, profanity, or obscenities.

2.2.2 Encourage, glorify, or promote illegal activity, violence, cruelty, discrimination, network marketing, or Ponzi-type schemes.

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- 2.2.3 Exploit children, facilitate phishing, hacking, or identity theft, or defame, threaten, harass any person or group, or attempt to impersonate the identity of a third party.
- 2.2.4 Infringe upon a third party business, contractual, privacy, or fiduciary right.
- 2.2.5 Contain malicious or applications code of any type.
- 2.2.6 Make or facilitate any form of computer, server, or network attack or disruption.
- 2.2.7 Compromise, disrupt, or degrade the normal and proper operation of any computer, server, or internet system, including Needles' systems.

2.3 Send, post, host, or enable any offensive, abusive, inappropriate, malicious, or detrimental e-mails, blog postings, or instant messages, including, but not limited to, any types of mail-bombs or SPAM ("SPAM" is defined as any type of unsolicited e-mail that does not utilize "Double Opt-In/Single Opt-Out" methodologies).

2.4 Use or provide open proxies or Internet Relay Chat ("IRC").

3. ACCEPTABLE USE:

3.1 You represent and warrant that all information that you provide to Needles to open or update your Needles account including but not limited to your name, business name, address, e-mail address, telephone number, credit card, and/or ACH/Bank information ("Customer Information"), is accurate and complete. In addition, (a) you agree that you will at all times keep your Customer Information accurate, complete, and up-to-date, (b) you understand that your failure to do so may result in suspension of all of your Needles Services or cancellation of all of your Needles Services and termination of this TOS, and (c) you understand that you will be solely liable for your inability or failure to receive e-mail or other communications from us due to your failure to keep your Customer Information accurate, complete, and up-to-date.

3.2 By providing us with your e-mail address, you hereby agree that we may send you service-related or other notices by e-mail rather than by postal mail.

3.3 You agree that you will not share your account passphrase, password, security question answers, or any other confidential information about your account with any other person or persons. In the event any person other than you uses such access credentials, you acknowledge and agree that you will be solely liable for any actions taken by such person or persons, and that we will not be liable for any actions taken by such person or persons. You must notify us immediately if you know of or suspect any unauthorized access to your account.

3.4 If you provide us with a business name for your account, we will consider that business to be the owner of the account and we may require certain change authorizations from an officer (if a corporation), authorized member (if a limited liability company), partner (if a partnership), or owner (if a sole proprietorship) of the business. If you do not provide us with a business name for your account, we will consider you to be the owner of the account and we may require certain change authorizations from you.

3.5 You understand and agree that (a) Needles or any applicable licensor retains all rights, title, and interest in and to any computer programming, formatting code, operating instructions, or other

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software used in providing the Services to you (“Programming”) and (b) that you will not reverse engineer, disassemble, decompile, or otherwise attempt to derive any source code of the Programming.

3.6 You understand and agree that we may access your server without notice to you in the event of an actual or suspected violation of this TOS or to otherwise maintain and protect the security and reliability of our network.

3.7 You understand and agree that if you do not respond within three (3) calendar days to a Needles-generated abuse-related inquiry sent to you that, in addition to all other rights we have under this TOS or otherwise at law, at the end of the three (3) calendar days Needles may suspend all of your Needles Services or cancel all of your Needles Services and terminate this TOS without further notice, refund or obligation to you.

3.8 You understand and agree that initiating a “chargeback” to your credit card, or via ACH for services provided to you by Needles shall be a violation of this TOS.

3.9 You agree to conduct yourself in a professional manner at all times when interacting with Needles employees. You understand and agree that abusing Needles employees, whether by lying, cursing, yelling, threatening, or otherwise, whether over the telephone, via e-mail or chat, or when submitting on-line tickets, shall be a violation of this TOS and may be grounds for suspension of all of your Needles Services or cancellation of all of your Needles Services and termination of this TOS. In addition, making threats of physical violence, either against Needles, its facilities, or any of its shareholders, directors, officers, employees, contractors, or agents will be promptly reported to the authorities and will be grounds for immediate termination of this TOS.

4. **OWNERSHIP OF AND RESPONSIBILITY FOR CUSTOMER DATA.**

4.1 Needles does not own any software, data, information, or material that you or your individual users submit to the Service in the course of using the Service (“Customer Data”). You, and not Needles, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use all Customer Data.

4.2 You hereby grant to Needles a non-exclusive, royalty-free, license to so much of the Customer Data as Needles may require to perform the Services. You represent and warrant that your Customer Data you provide to Needles under this TOS will not infringe any patent, copyright, trade secret, or other intellectual property right held by any third party.

5. **FEES AND BILLING:**

5.1 You agree to pay for the applicable fee or fees for each of the Services identified on your Order Form (as such fees may be updated by Needles from time to time) or subsequently ordered by you, including but not limited to all setup fees, monthly fees, quarterly fees, annual fees, usage fees, web traffic fees, late fees, hourly-rate fees, or other fees.

5.2 We accept payments by credit card, check, and/or e-check. By providing Needles with credit card or checking account information for payment, you hereby authorize Needles to charge the account on record for all fees due.

5.3 Applicable setup fees and the fees due for your first service term (first month, first quarter, or first year, etc.) are both due upon your signing of the Needles Hosted Services Order Form. You

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understand and agree that Needles may change the pricing for new Services at any time and for existing services at the beginning of any new billing period.

5.4 You understand and agree that no refunds or reimbursements, in full or in part, will be paid to you at any time.

5.5 Each of your Needles Services will be automatically renewed on the anniversary date of the start of the then-current term of such Needles Service (“Anniversary Date”). By way of example and not limitation, Services contracted for a monthly term starting on May 5 will automatically renew on June 5 and on the 5th day of each month thereafter unless terminated as provided herein; services contracted for an annual term starting on May 5 will automatically renew on May 5 of the next year unless terminated as provided herein. If Needles has a valid credit card or current ACH instructions/banking information on file for your account on a Service's Anniversary Date your credit card or bank account will be automatically charged at that time for the cost of renewing the Service through its next Anniversary Date. If Needles does not have a valid credit card or current ACH instructions/banking information on file for your account on a Service's Anniversary Date, your Needles account will be automatically charged at that time for the cost of renewing the Service through its next Anniversary Date and you will be liable for payment of those fees.

5.6 You are liable for all unpaid amounts due on your account even if Needles cancels your Services or terminates this TOS partway through a billing cycle. Needles may charge your account late fees for overdue payments and Needles may charge you interest on unpaid balances at the rate of 1.5% per month or the maximum rate allowed by law. In addition, your equipment, domains, web content, or other assets may be retained by Needles as collateral for unpaid charges and penalties until such charges and penalties are paid in full. Needles may use a third-party service to collect unpaid amounts and Needles shall be entitled to charge you attorneys’, collection, or other reasonable fees incurred to collect unpaid balances.

5.7 If you dispute a charge, to avoid interruption of your Services you must (a) pay the entire amount invoiced to you by its due date, and (b) notify the Needles billing department about the disputed amount within thirty (30) days. If Needles, in its reasonable discretion, validates your claim, your account will be credited with the validated amount. In addition, you understand and agree that Needles will not be liable for any claim, charge, or other liability of any type related to the Services after a period of one (1) year from when the specific Services were provided.

5.8 You specifically understand and agree that for each (a) returned check, or (b) Needles fee that you “charge back” to your credit card or via ACH, that you will be liable to Needles (and Needles may collect from you) a “Returned Check Fee” or “Chargeback Fee,” as the case may be, in the amount of \$35.00.

5.9 Charges for bundled Services will be “unbundled” if you cancel any part of the bundle of Services.

5.10 You understand and agree that you are responsible for any network bandwidth charges incurred from your internet provider.

5.11 You understand and agree that you will automatically be assessed a charge of \$50.00 for (a) each IP address assigned to your account that, in Needles’ reasonable discretion, is blacklisted or, if your account is closed, was blacklisted, and for (b) each IP address which was blacklisted because of your action or inaction, even if it was not assigned to your account or if your account has been closed.

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6. TERM AND TERMINATION:

6.1 This TOS will become effective when:

6.1.1 For Needles “click-through” agreements, when you “Accept” online the agreement into which this TOS is incorporated.

6.1.2 For Needles agreements you physically sign, when you affix your signature and return the executed agreement to Needles.

6.1.3 For Needles agreements you sign electronically, when the electronic signature process is completed by both you and Needles.

6.2 This TOS will remain in effect until it is terminated by either party under its terms, as provided in Section 7.

6.2.1 Termination of this TOS will automatically terminate each agreement into which it is incorporated.

7. CANCELLATION; SUSPENSION:

7.1 To cancel any of your Needles Services or terminate this TOS (a) your account must be paid in full and be in good standing, and (b) you must provide Needles seven (7) days written notice. Needles can only accept cancellation and termination instructions submitted through e-mail or fax. We are unable to accept any cancellation or termination instructions submitted to us in any other manner.

7.2 If you provide cancellation or termination notice to Needles less than seven (7) days before the upcoming Anniversary Date of your Needles Services (a) on that Anniversary Date you will still be automatically charged for the cost of renewing your Needles Services through their next Anniversary Date and (b) you will not be eligible to receive any refund, either in part or in full, for any of the amount charged to you on that Anniversary Date.

7.3 You may obtain your Customer Data at any time during the term of this TOS and for thirty (30) days after cancellation or termination by submitting a written request via email or fax. Needles will use reasonable efforts to facilitate retrieval of your Customer Data and delivery of such Customer Data to you on external storage media, subject to your payment of (i) any undisputed amounts due and (ii) Needles’ service fee of \$250.00 for data retrieval. You agree and acknowledge that Needles has no obligation to retain your Customer Data and that such Customer Data will be irretrievably deleted after 30 days following cancellation or termination.

7.4 Needles may, without obligation to you, unilaterally suspend all of your Needles Services or cancel all of your Needles Services and terminate this TOS if (a) payment for Services is not received by the Anniversary Date of the then-current term of any Needles Service; (b) we determine, in our sole discretion, that you have or it is alleged that you have otherwise violated this TOS; or (c) if any invoice is outstanding more than 30 days. Needles will use commercially reasonable efforts to provide you five (5) days' notice prior to suspending or terminating your Service and shall be entitled.

7.5 You understand and agree that upon cancellation of your Needles Services and termination of this TOS that Needles has the right to immediately bar your access to your server or account.

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7.6 In the event of an attack or threatened or suspected security incident involving the Services, Needles reserves the right to immediately audit the relevant elements of infrastructure involved in providing the Services, including your server and any Customer Data hosted thereon. Needles further reserves the right to take whatever reasonable steps that are necessary to halt such security incident, including taking any portion of the relevant elements of infrastructure offline and suspending access to the Services. Needles will use reasonable efforts to notify you of the incident and the steps it is taking. However, if time is critical, action may be required before you can be reached. You agree that Needles shall not be liable for any such security incident or related suspension of Services.

8. LIMITATIONS; INDEMNITY:

8.1 IN NO EVENT WILL NEEDLES' LIABILITY TO YOU IN THE AGGREGATE FOR ANY AND ALL BREACHES, DEFAULTS, OR CLAIM OF LIABILITY UNDER THIS TOS OR AN AGREEMENT INCORPORATED INTO THIS TOS OR FOR AN AGREEMENT INTO WHICH THIS TOS IS INCORPORATED BE EQUAL TO AN AMOUNT GREATER THAN THE FEES PAID BY YOU TO NEEDLES DURING THE ONE (1) CALENDAR MONTH PERIOD PRECEDING THE DATE OF THE EVENT GIVING RISE TO SUCH CLAIM OF LIABILITY.

8.2 IN NO EVENT WILL NEEDLES, ITS PARENTS, SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, DIRECTORS, OFFICERS, CONTRACTORS OR EMPLOYEES BE LIABLE TO YOU UNDER ANY CIRCUMSTANCES FOR ANY THIRD PARTY, SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, MULTIPLE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, ANY LOSS OR CORRUPTION OF DATA, LOSS OF USE, OR INTERRUPTION OF BUSINESS) COSTS, PENALTY OR EXPENSE OF ANY KIND WHATSOEVER AND HOWSOEVER CAUSED, WHETHER ARISING OUT OF, OR IN CONNECTION WITH, THIS TOS OR AN AGREEMENT INCORPORATED INTO THIS TOS OR FOR AN AGREEMENT INTO WHICH THIS TOS IS INCORPORATED, WHETHER BASED IN CONTRACT, WARRANTY, NEGLIGENCE OR OTHER TORT, BREACH OF ANY STATUTORY DUTY, THE FAILURE OF ANY LIMITED OR EXCLUSIVE REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE GROUNDS, EVEN IF NEEDLES HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

8.2.1 YOU ACKNOWLEDGE THAT THESE LIMITATIONS ARE AN ESSENTIAL ELEMENT OF THIS TOS AND WITHOUT SUCH LIMITATIONS NEEDLES WOULD NOT ENTER INTO THIS TOS.

8.3 WE DO NOT WARRANT THAT THE SERVICES WILL BE FREE OF ERRORS, BE UNINTERRUPTED, OR WILL MEET YOUR REQUIREMENTS. THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS AND WE EXPRESSLY DISCLAIM ALL WARRANTIES, CONDITIONS, AND INDEMNITIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR ANY OTHER WARRANTY ARISING FROM THE COURSE OF PERFORMANCE OR COURSE OF DEALING. YOU UNDERSTAND AND AGREE THAT WE WILL NOT BE LIABLE FOR ANY TEMPORARY DELAY, OUTAGE, OR INTERRUPTION OF THE SERVICES, AND YOU HAVE NOT ENTERED INTO THIS TOS IN RELIANCE UPON ANY WARRANTY OR REPRESENTATION EXCEPT THOSE SPECIFICALLY SET FORTH HEREIN. ALL SERVICES PROVIDED UNDER THIS TOS WILL BE DEEMED ACCEPTED WHEN DELIVERED.

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8.4 You agree to indemnify, defend by counsel reasonably accepted to Needles, and protect and hold Needles harmless from and against any and all claims, liabilities, losses, costs, damages, expenses, including consultants' and attorneys' fees and court costs, demands, causes of action, judgments, etc. directly or indirectly arising out of or related to your Customer Data or use of the Services. Needles will provide you notice of and shall have the option to undertake and conduct the defense of any such claim if you are not diligently prosecuting such defense.

9. MISCELLANEOUS:

9.1 This TOS may not be assigned by you without our express written consent. Needles may assign any or all of its rights and obligations to others at any time. This TOS shall be binding on you and Needles and your or its successors and permitted assigns.

9.2 Nothing in this TOS shall be construed as creating a joint venture, partnership, agency, employment, franchise, or other relationship between you and Needles. Also, neither party to this TOS shall have the right, power or authority to create any obligations or duty, express or implied, on behalf of the other.

9.3 In the event of any dispute arising under the terms of this TOS, each party agrees that it shall be subject to binding arbitration under the rules of the American Arbitration Association and any such Arbitration action must be filed in Miami, Florida. This agreement shall be governed under the laws of the State of Florida without giving effect to such laws' provisions regarding conflict of laws. YOU HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS YOU MAY HAVE TO A TRIAL BY JURY IN ANY LAWSUIT OR PROCEEDING RELATING TO OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS TOS, WHETHER ARISING OUT OF CONTRACT, TORT, OR OTHERWISE.

9.4 This TOS is the final expression of the agreement between you and Needles regarding the Services. This TOS may not be modified or amended, nor may it be modified by custom and usage of trade or course of dealing, except by an instrument in writing and signed by you and Needles.

9.5 Needles' waiver of your breach of any portion of this TOS shall not operate or be construed as its waiver of any subsequent breach of the same provision or any other portion of this TOS and no remedy available to Needles hereunder is exclusive of any other remedy available to Needles hereunder or otherwise available at law or in equity.

9.6 If any provision of this TOS or its application is held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this TOS shall remain in full force and effect, enforced to fullest extent consistent with applicable law.

9.7 You agree that you will not solicit Needles employees as your employees or contractors.

9.8 You represent and warrant that you have full power to enter into this TOS and any agreement into which this TOS is incorporated by reference.

9.9 The section headings contained herein are for reference purposes and convenience only and shall not in any way affect the meaning or interpretation of this TOS.

9.10 Needles shall not be deemed to be in default of or to have breached any provision of this TOS as a result of any delay, failure in performance or interruption of the Services, resulting directly or indirectly from acts of God, acts of civil or military authority, civil disturbance, war, strikes or other labor

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disputes and disturbances, fire, transportation contingencies, shortages of facilities, fuel, energy, labor or materials, or laws, regulations, acts or order of any government agency or official thereof, other catastrophes, or any other circumstances beyond our reasonable control.

9.11 Sections 2, 3.6, 5.1, 5.6, 5.8, 5.9, 5.12, 6, 7, 8, and 9 shall survive termination of this TOS.

By: _____

Signature: _____

Position: _____

Date: _____

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E-mail: Info@Needles.com

Needles[®]
Needles.com

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