

TERMS & CONDITIONS

This TERMS & CONDITIONS OF USAGE (the “Terms”) set forth the terms and conditions for use of the Gladiator Forensics LLC (“Gladiator”) software available through this portal. Gladiator reserves the right to change these Terms from time to time and such changes shall be published on the Gladiator website.

1. DEFINITIONS

- a. **“Materials”** shall mean the written materials relating to the operation and use of the Gladiator Software including, but not limited to, user guides, technical support, release notes, and online help files regarding use of the Gladiator Software, and any other materials prepared in connection with any Gladiator Software modification, correction, or enhancement, and shall include any updated versions of Materials as may be provided by Gladiator from time to time (1) in the ordinary course of Gladiator’s business; (2) as part of an online tutorials or help files provided; or (3) in the course of providing web seminars or other information sessions for customers and users of the Software.
- b. **“Base Components”** means the hardware, software, and hosting environment that Gladiator makes available for use by You as part of the Service.
- c. **“Cloud Hosting”** means the provision of products and services in a hosted, virtualized environment, accessible via the internet.
- d. **“Enterprise”** means the provision of products and services in a self-hosted environment, on your own premises, using your own servers, hardware and associated IT support services.
- e. **“Gladiator Software”** means Gladiator proprietary software applications and user interfaces provided by Gladiator and made available to You by Gladiator as part of the Service. Gladiator Software may contain third-party components licensed to Gladiator.
- f. **“Your Data”** means all data, files, including hypertext markup language files, documents, audio and visual information, graphics, scripts, programs, applets or servlets that You create, install, upload to or transfer in or through the Service or provides in the course of using the Service, excluding identification and other information provided by You relative to Your Users.
- g. **“Electronic Communications”** shall mean any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically to or from the Service.
- h. **“Infrastructure Support Services”** shall mean the support provided by Gladiator for the maintenance and stability of the computer hardware and hosting environment provided as part of the Service.
- i. **“Product Support Services”** shall mean the support provided by Gladiator to remediate, correct, or abate errors in the Gladiator Software that is provided as part of the Service.
- j. **“Purchase Order Form(s)”** refers to Your document, in either electronic or written form, issued by You to confirm Your purchase of the Service. The parties acknowledge and agree that the terms and conditions of any such Purchase Order Form shall not be binding upon Gladiator, or in any way modify, amend, or supersede the terms and conditions of these Terms.
- k. **“Service”** shall mean the software and infrastructure in a hosted environment provided and maintained by Gladiator to which You are being granted access under these Terms via a web site or another designated IP address. Service shall also include any hardware purchased from Gladiator including,

without limitation, the Gladiator GAR. Service or Services includes Product Support Services described in these Terms.

- I. **“Term”** means any Initial Term or Renewal Term as defined in these Terms.
- m. **“Third Party Products”** means application software products provided by third party vendors, including operating system and application software with which the Gladiator Software interfaces and which provides certain functionality essential to the operation of the Gladiator Software. Third Party Products are licensed to Gladiator for incorporation and use in the hosted environment as part of the Service. For the sake of clarity, the term Third-Party Products does not refer to third-party software components, if any, incorporated into Gladiator Software.
- n. **“User(s)”** means You, Your employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied authorization, user identifications and passwords by You (as necessary) or on Your behalf.

2. PRIVACY

Your Privacy is important to us. While processing is based on consent and to the extent permitted by law, by agreeing to these Terms and Conditions, you consent to Gladiator’s collection, and use of Your Content and Data, strictly for the purposes of rendering the support requested by You as the user. In some cases, we may provide separate notice and request your consent for the strict purpose of providing you with the requested support services.

3. YOUR Data

Some of our Services will allow you to store or share Your Data with others or receive material or information from others. We do not claim ownership of Your Data. Your Data remains Your Data and you are responsible for it.

- If you share Your Data with others, you understand that they may be able to, on a worldwide basis, use, save, record, reproduce, broadcast, transmit, share and display Your Data. If you do not want others to have that ability, do not use the Services to share Your Data. You represent and warrant that for the duration of these Terms, you have (and will have) all the rights necessary for Your Data that is uploaded, stored, or shared on or through the Services and that the collection, use, and retention of Your Data will not violate any law or rights of others. Gladiator cannot be held responsible for Your Data or the material others upload, store or share using the Services.
- To the extent necessary to provide the Services to you and others, to protect you and the Services, and to improve Gladiator’s products and services, you grant to Gladiator access, to make copies of, retain, transmit, reformat, display, and distribute via communication tools Your Data on the Services.

4. CODE OF CONDUCT

By agreeing to these Terms, you’re agreeing that, when using the Services, you:

- Will not do anything illegal.
- Will not engage in any activity that exploits, harms, or threatens to harm children.
- Will not send spam. Spam is unwanted or unsolicited bulk email, postings, contact requests, SMS (text messages), or instant messages.
- Will not circumvent any restrictions on access to or availability of the Services.
- Will not engage in activity that is harmful to you, the Services, or others (e.g., transmitting viruses, stalking, posting terrorist content, communicating hate speech, or advocating violence against others).
- Will not infringe upon the rights of others (e.g., unauthorized sharing of copyrighted material, resale or other distribution).
- Will not engage in activity that illegally violates the privacy of others.
- Will not help others break these rules.
- Will not use third-party content or data without proper authority.
- Will not engage in activity without proper authority including, without limitation, obtaining necessary court ordered documentation such as a search warrant or other order of a court of competent jurisdiction as required in the circumstances.

Enforcement. If you violate these Terms, Gladiator may stop providing Services to you, or close your Gladiator account, or both. Gladiator may also block delivery of a communication to or from the Services in an effort to enforce these Terms or we may remove or refuse to publish Your Content for any reason. When investigating alleged violations of these Terms, Gladiator reserves the right to audit usage of services by your users in order to resolve the issue. However, we cannot monitor the entire Services and make no attempt to do so.

5. INSTALLATION/LIMITATION OF LIABILITY

You will ensure that Your computer systems are compatible with the requirement necessary to use the Gladiator Software. You acknowledge that the system requirements may change from time to time, primarily as a result of modifications to the Gladiator Software and Service. Gladiator shall not be liable, or responsible, for any deficiency, malfunction, or operational error, in Your system. Gladiator shall not be liable, or responsible, for any breach of security attributable to Your system, software, security, practices, or any other reason under Your control.

6. LICENSE GRANT

LICENSE GRANT BY GLADIATOR TO YOU. Subject to the terms and conditions of these Terms, Gladiator grants to You during the Term of these Terms the nontransferable, nonexclusive, worldwide right to permit Users to (a) use the Service, including the Base Components, (b) display and print Your Data, and (c) use the Materials solely in connection with the Service, all solely for Your own internal business operations, provided such internal business operations shall not include commercial time-sharing, rental, outsourcing, service bureau or similar use. For purpose of this license grant, the term "You" shall include any outsourced or other third-party consultants or similar personnel supporting You as part of their typical business practices, acting under Your direction, and

for whom You are fully responsible hereunder. You acknowledge and agrees that the license granted herein, is bound by the rights granted to You in these Terms are subject to all of the following agreements and restrictions: (i) the maximum number of Users that You authorize to access the Service shall not exceed the number of licenses You have been granted; (ii) licenses may be reassigned from time to time to new Users who are replacing former Users who are no longer permitted to access the Service; (iii) You shall not license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, or otherwise commercially exploit, or make the Service, or the Materials, available to any third party other than an authorized User; (iv) You shall not modify, make derivative works of, disassemble, reverse compile, or reverse engineer, any part of the Service, including, without limitation, the Gladiator Software or Materials that are provided as a part thereof, or access the Service or Materials in order to build a similar, or competitive, product or service; (v) You shall not create Internet "links" to the Service, or "frame" or "mirror" any part of the Service, including any content contained in the Service, on any other server or device; (vi) except as expressly stated herein, no part of the Service, or Materials, may be copied, reproduced, distributed, republished, downloaded, displayed, posted, or transmitted in any form, or by any means, including, but not limited to, electronic, mechanical, photocopying, recording, or other means; (vii) You agree to make every reasonable effort to prevent unauthorized third parties from accessing the Service; (viii) You acknowledge and agree that Gladiator, or its Third Party vendors, shall own all right, title and interest in and to all intellectual property rights in the Service, and the Materials, and any suggestions, enhancement requests, feedback, or recommendations provided by You, or Your Users, relating to the Service, or the Materials, including all unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, know-how, and other trade secret rights, and all other intellectual property rights, derivatives, or improvements thereof; (ix) unauthorized use, resale, or commercial exploitation of any part of the Service or Materials in any way is expressly prohibited; (x) You do not acquire any rights in the Service or Materials, express or implied, other than those expressly granted in these Terms, and all rights not expressly granted to You are reserved by Gladiator and Third Party vendors; and (xi) these Terms is not a sale and does not convey any rights of ownership in, or related to, the Service, Gladiator Software, Third Party Products, Materials, or any other items that are provided under this license, to You.

LICENSE GRANT BY YOU TO GLADIATOR. Subject to the Terms, You grant to Gladiator, and its Third Party vendors, the non-exclusive, nontransferable worldwide right to copy, store, record, transmit, display, view, print, or otherwise use (a) Your Content or Data solely to the extent necessary to provide the Service, and Materials, to You, and (b) any trademarks that You provide Gladiator for the purpose of including them in Your user interface of the Service ("Your Trademarks"). You acknowledge and agree that Your Data, and information regarding You or Your Users, that is provided to Gladiator and its Third-Party vendors in connection with these Terms, may be (a) processed by Gladiator and its Third-Party vendors to the extent necessary to provide the Service, and (b) transferred outside of the country or any other jurisdiction where You or Your Users are located. In addition, You acknowledge and agree that it is Your obligation to inform Your Users and customers of the processing of Your Data and information regarding You and Your Users pursuant to these Terms, and to ensure that such Users or customers have given any necessary consent to such processing as required by all applicable data protection legislation. You shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and copyright, of all of Your Data and information regarding You or Your Users. You agree that the license to the Your Data shall survive termination of these Terms solely for the purpose of storing backup copies of Your Data in accordance with these Terms.

By providing You with the Services, Gladiator does not acquire any right, title, or interest, in the content material (including but not limited to text, software, scripts, trademarks, logos, HTML coding, domain names, links, graphics, audio, video, and any data) that You make available for use by

Users by means of the Services (collectively “Content”). Except as expressly set forth herein, You are solely responsible for all Content.

7. PROPRIETARY RIGHTS

You acknowledge and agree that the Service, and any necessary software used in connection with the Service, contains proprietary and confidential information that is protected by applicable intellectual property laws, and other laws. You further acknowledge and agree that the content, or information, presented to You during a trial or through the Service may be protected by copyrights, trademarks, service marks, patents, or other proprietary rights, and laws. Except where expressly provided otherwise by Gladiator, nothing in the Service, the Materials, or the Terms, shall be construed to confer any license to any of Gladiator's (or its third-party manufacturer's, author's, developer's, vendor's, and service provider's ("Third Party vendors"), intellectual property rights, whether by estoppel, implication, or otherwise. Without limiting the generality of the foregoing, any names or trademarks of the Gladiator Software, and other Gladiator service marks, logos, and product service names, are marks of Gladiator (the “Gladiator Marks”). You agree not to display or use the Gladiator marks, or the marks of any Third-Party vendor, in any manner without the owner's express prior written permission. Gladiator reserves the right to subcontract any or all services provided hereunder to third parties.

8. LICENSE FEE, TERM AND PAYMENT

You will pay the required licensing, support, and maintenance fees for each hosted or enterprise product license purchased. For the Annual Hosted Services, the term (“Term”) for such service will commence on the date You access the Service, and shall be entitled to continue using the Services until the anniversary renewal date of the subscription. Should You decide not to renew their subscription, Gladiator will delete all related data to the account. Any data that You need must be retrieved prior to the termination of the annual subscription. For Gladiator-OSS enterprise installations, the usage of the Gladiator products and services will be stipulated by the terms and conditions of the enterprise contract. You shall not have access to the Gladiator Software of Service until the fee is paid in full.

Notwithstanding the foregoing, Gladiator assumes no liability or responsibility for any loss of Your Data or information that is lost or corrupted due to system crashes, erroneous deletions, or other unplanned events.

9. REQUIREMENTS

9.1. Service Extensions or Updates

You further agree that, unless explicitly stated otherwise, any new features that augment or enhance the Service, and or any new Service subsequently purchased by You pursuant to an amendment accepted by Gladiator referencing these Terms will be subject to these Terms.

9.2. You Must Have Internet Access

In order to use the Service, You must have or must obtain access to the World Wide Web, either directly or through devices that access Web-based Content. You must also provide all equipment necessary to make (and maintain) such connection to the World Wide Web.

9.3. Email and Notices

You agree to provide Gladiator with Your e-mail address, and to accept emails (or other Electronic Communications) from Gladiator at the e-mail address You specify. Notwithstanding any provision in these Terms to the contrary, acknowledgement by one of Your officers is not required with respect to e-mail communications pertaining to Your use of the Service, including without limitation communications relating to support, maintenance, or updating of the Service. You further agree the Gladiator may provide any required notices, including legal notices to You, through either e-mail (or other electronic transmission), by mail, or by express delivery service.

9.4. Passwords, Access and Notification

You may designate up to the number of Users that corresponds to the number of permitted Users. You will provide and assign unique password and user names to each authorized User for each license purchased. You acknowledge and agree that You are prohibited from sharing passwords and or user names with unauthorized users. You will be responsible for the confidentiality and use of Your (including Your employees') passwords and user names. You will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Your Data, and all other data of any kind, contained within emails or otherwise entered electronically through the Service, or under Your account. Gladiator will act as though any Electronic Communications it receives under Your passwords, User name, or account number will have been sent by You. You agree to notify Gladiator if You become aware of any loss, theft, or unauthorized use, of any of Your passwords, user names, or account number. The foregoing shall also apply to any Purchase Order Forms submitted by the You for further User licenses.

9.5. Your Responsibilities

You agree to comply with all applicable local, state, national, and foreign laws, treaties, regulations, and conventions, in connection with its use of the Service, including without limitation those related to data privacy, international communications, and the exportation of technical or personal data. You will ensure that any use of the Service by Your Users is in accordance with the terms of these Terms. You agree to notify Gladiator immediately of any unauthorized use of any password, account, or any other known or suspected breach of security, or any known, or suspected, distribution of Your Data. You acknowledge and agree that the Service is subject to the U.S. Export Administration Laws and Regulations. You agree that no part of the Service, or information obtained through use of the Service, is being or will be acquired for, shipped, transferred, or re-exported, directly or indirectly, to proscribed or embargoed countries, or their nationals, nor be used for nuclear activities, chemical biological weapons, or missile projects, unless authorized by the U.S. Government. Proscribed countries are set forth in the U.S. Export Administration Regulations, and are subject to change without notice, and You must comply with the list as it exists in fact. You certify that neither You nor any Users are on the U.S. Department of Commerce's Denied Persons List, or affiliated lists, or on the U.S. Department of Treasury's Specially Designated Nationals List. You agrees to comply strictly with all U.S. export laws and assumes sole responsibility for obtaining licenses to export or re-export as may be required. Any unauthorized use of the Service

may violate copyright laws, trademark laws, the laws of privacy and publicity, and communications regulations, and statutes. The Service may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000.

You are solely responsible for obtaining all licenses and permissions necessary related to Your Data, including without limitation, licenses for any third-party software included in the Your Data.

You shall not resell the Services directly or indirectly to third parties.

9.6. Transmission of Data

You understand that the technical processing and transmission of Your Electronic Communications is fundamentally necessary to Your use of the Service. You expressly consent to Gladiator's interception and storage of Electronic Communications or Your Data, and You acknowledge and understand that Your Electronic Communications will involve transmission over the internet, and over various networks, only part of which may be owned or operated by Gladiator. You acknowledge and understand that changes to Your Electronic Communications may occur in order to conform and adapt such data to the technical requirements of connecting networks or devices. You further understand that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. You agree that Gladiator is not responsible for any Electronic Communications or Your Data which are lost, altered, intercepted or stored, without authorizations during the transmission of any data whatsoever across networks not owned or operated by Gladiator.

9.7. Gladiator's Support

Gladiator will make commercially reasonable efforts to promote Your successful utilization of the Service, including but not limited to maintenance and support of the Base Components, providing user guides and on-line help, and product support. Infrastructure Support Services shall be provided as reasonably deemed necessary by Gladiator. Infrastructure Support Services pertain to the maintenance of the computer hardware and hosting environment provided as part of the Service exclusively for the organization that has purchased the services and has a current and active contract. Gladiator will also provide Product Support for Gladiator Software or Gladiator hardware employed as part of the Service. Product Support pertains to support designed to remedy errors in Gladiator Software or hardware that cause it to deviate from the specifications as described in the Materials.

9.8. Confidential Information

Each party may have access to information that is confidential to the other party ("Confidential Information"). For purposes of these Terms, Confidential Information shall include any information that is clearly identified in writing at the time of disclosure as confidential, as well as any information that, based on the circumstances under which it was disclosed, a reasonable person would believe to be confidential. Your Confidential Information shall include, but not be limited to, Your Data. A party's Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission of the other party; (ii) was in the other party's lawful possession prior to the disclosure without any obligation of confidentiality, and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; (iv) is independently developed by the other party without use of, or reference, to the other party's Confidential

Information, as established by written records. The parties agree to use commercially reasonable efforts not to make each other's Confidential Information available in any form to any third party. Notwithstanding the foregoing, You acknowledge and agree that Gladiator may disclose Your Confidential Information to Gladiator's Third-Party vendors solely to the extent necessary to provide products or services under these Terms. This Section will not be construed to prohibit disclosure of Confidential Information to the extent that such disclosure is required by law, or valid order of a court, or other governmental authority; provided, however, that a party who has been subpoenaed, or otherwise compelled by a valid law or court order, to disclose Confidential Information (the "Responding Party") shall first have given sufficient and prompt written notice to the other party of the receipt of any subpoena or other request for such disclosure, so as to permit such party an opportunity to obtain a protective order, or take other appropriate action. The Responding Party will cooperate in the other party's efforts to obtain a protective order, or other reasonable assurance that confidential treatment will be afforded protection as Confidential Information. If the Responding Party is compelled as a matter of law to disclose the Confidential Information, it may disclose to the party compelling the disclosure only that part of the Confidential Information as is required by law to be disclosed.

The obligations in this Section shall not apply to the recipient of Confidential Information or Gladiator with respect to Your Data to the extent disclosure of Confidential Information or You Data is required to comply with laws, or respond to requests by a regulatory or judicial body, or as otherwise required for legal process. In the event that any such disclosure is required, the recipient, or Gladiator with respect to Your Data, reserves the right to charge the other party on a time-and-materials basis for recipient's/Gladiator's reasonable efforts related to its compliance and response, including, if applicable, reasonable attorney's fees.

10. SUSPENSION/TERMINATION

10.1. Suspension for Delinquent Account

Gladiator reserves the right to suspend access, support or use of the Service for any account for which any payment is due but remains unpaid. You agree that Gladiator shall not be liable to You, or to any third party, for any suspension of the Service resulting from Your non-payment of the fees as described in this Section.

10.2. Suspension for Ongoing Harm

You agree that Gladiator may, with reasonably contemporaneous telephonic or electronic mail notice to You, suspend Your access to the Service if Gladiator reasonably concludes that Your use of the Service is causing immediate and ongoing harm to Gladiator or others. Gladiator will use commercially reasonable efforts to resolve the issues causing the suspension of Service. You agree that Gladiator will not be liable to You or to any third party for any suspension of the Service under such circumstances as described in this Section.

10.3. Handling of Your Data in the Event of Termination

You acknowledge and agree that following termination of the Service, You will return all Materials (except that it may retain a copy for archival purposes or as otherwise provided in these Terms) to Gladiator, and Gladiator may immediately deactivate Your account. Furthermore, unless otherwise

agreed-upon by the Parties in writing, Gladiator shall remove or overwrite all of Your Data from Gladiator's systems following the effective date of termination or cancellation, in accordance with Gladiator's standard procedures. Notwithstanding the foregoing, nothing shall preclude Gladiator from maintaining one copy of Your Data if required by law.

10.4. Handling of Application in the Event of Termination

Upon termination of Your use of the Services, you are solely responsible for the retention of Your Data, and Your application documentation updated during the hosting period by Your users (if any) as defined in these Terms.

11.

MODIFICATION/DISCONTINUATION/MAINTENANCE

11.1. Modification to or Discontinuation of the Service

Gladiator reserves the right at any time and from time to time to modify, temporarily or permanently, the Service (or any part thereof). Notwithstanding the foregoing, except for routinely scheduled down time, or as otherwise provided in these Terms, Gladiator shall use commercially reasonable efforts to notify You prior to any such modification; further, Gladiator shall consider Your validation needs and requirements in connection with any modification of the Service. You acknowledge that Gladiator reserves the right to discontinue offering the Service at any time. You agree that Gladiator will not be liable to You or any third party for any modification or discontinuance of the Service as described in this Section 11.

11.2. Modification to Third Party Software and Support Cost

In the event that Gladiator incur any increased cost from Third party software licenses or annual support fees during the term of these Terms, Gladiator reserves the right to pass these costs to You.

11.3. Maintenance

In order to perform maintenance, including infrastructure and application upgrades, there will be routinely scheduled down time. Gladiator further reserves the right to issue new releases in which Gladiator adds functionality to the Service. You acknowledge that these periodic major releases can take several hours to complete.

In order to perform maintenance services, your account with Gladiator must be current and active. Gladiator reserves the right to discontinue any and all product related support and services upon the expiration date of maintenance services.

In the event that Gladiator, in its sole discretion, determines that any maintenance is necessary that would affect Your use of the Service, Gladiator will use commercially reasonable efforts to notify You as soon as it becomes aware of such need.

12. WARRANTIES

12.1. Warranty of Functionality

Gladiator warrants to You that the Service will comply with the material functionality described in the Materials and that such functionality will be maintained in all material respects in subsequent upgrades to the Service. The warranty granted by Gladiator is subject to normal product usage and does not cover damages caused from misuse of the product or by Force Majeure. Your sole and exclusive remedy for Gladiator's breach of this warranty shall be that Gladiator shall use commercially reasonable efforts to correct such errors, or modify the Service, to achieve the material functionality described in the Materials within a reasonable period of time. However, Gladiator shall have no obligation with respect to this warranty claim unless notified of such claim within (30) days of the first material functionality problem. Further, Gladiator shall have no obligation with respect to this warranty claim, and You may not terminate the Agreement, where any alleged nonconformity is due to User error as reasonably determined by the parties after investigation and analysis by Gladiator's Product Support Center. Gladiator does not warrant that the Service will be free of non-material errors, bugs, or minor interruption, or that all such errors will be corrected.

12.2. Data Maintenance and Backup Warranty

Gladiator warrants during the Term of this Agreement, that it will, at a minimum, utilize and maintain the backup procedures for its Hosted services. In the event of a breach of this provision, Gladiator will use commercially reasonable efforts to correct Your Data or restore Your Data within ten (10) business days.

12.3. Non-Infringement Warranty

Gladiator warrants that it is the sole owner of, and or has full power and authority to grant, the license and use of the Service and other rights granted by the Agreement to You with respect to the Service; and that neither the performance by You in its utilization of the Service, nor the license of and authorized use by You of the Service, as described herein, will in any way constitute an infringement or other violation of any U. S. copyright, trade secret, trademark, patent, invention, proprietary information, non-disclosure, or other rights of any third party.

13. DISCLAIMER OF WARRANTIES

Except as otherwise stated in section 12 above, gladiator does not represent that your use of the service will be secure, timely, uninterrupted or error free; or that the service will meet your requirements; or that all errors in the service or documentation will be corrected; or that the system that makes the service available will be free of viruses or other harmful components; or the service will operate in combination with other hardware, software, systems, or data, not provided by gladiator; or the operation of the services will be secure; or that gladiator and its third party vendors will be able to prevent third parties from accessing your data or your confidential information; or any errors will be corrected; or any of your data will be accurate or reliable. The warranties stated in

section 12 above are the sole and exclusive warranties offered by gladiator. There are no other warranties or conditions, express or implied, including without limitation, those of merchantability or fitness for a particular purpose. Except as stated in section 12 above, the service is provided to you on an “as is” and “as available” basis and is for commercial use only. You assume all responsibility for determining whether the service or the information generated thereby is accurate or sufficient for your purpose.

14. LIMITATIONS OF LIABILITY

14.1. No Consequential Damages

Neither party shall be liable to the other party for exemplary, punitive, special, incidental, indirect or consequential damages including without limitation, interruption of business, lost profits, lost or corrupted data or content, lost revenue arising out of these terms (including without limitation the service, the use of the service or the inability to use service), even if the party has been advised of the possibility of such damages.

14.2. Direct Damage Limitations

14.2.1. In no event shall the aggregate liability of gladiator or any third-party vendors arising out of or in connection with these terms, including any license, use, or other employment of the service, whether such liability arises from any claim based on breach or repudiation of contract, breach of warranty, tort, or otherwise, exceed the total amounts actually paid by you for the particular case or matter related to the claim.

14.2.2. Except for a failure of gladiator to comply with its obligations with respect to hosted services, and subject to section 14.2.1 above, gladiator shall not be liable for any damages resulting from the loss or corruption of any data or content whether resulting from delays, no deliveries, mis deliveries, service interruptions or otherwise. Further, gladiator shall not be liable for any use, identification, misidentification, or other consequence of your use of the service in connection with your business.

14.3. Exclusions

The limitations of liability set forth in sections 14.1 and 14.2 shall not apply with respect to: (i) damages to persons or tangible property occasioned by the willful misconduct or gross negligence of a party, (ii) breaches by you of license terms applicable to gladiator provided software and third party products as set forth in section 6 above, (iii) your unauthorized use of gladiator’s or third-party vendor’s intellectual property, materials or assets; (iv) damages incurred as a result of a breach by a party of its obligations under section 9.8 that result in the disclosure of confidential information of the other party, or (v) claims that are the subject of indemnification pursuant to section 14 (which are subject to the limits, if any contained therein). Damages as limited by this section 14 are your sole and exclusive remedy if another remedy is provided and such remedy is deemed to fail of its essential purpose.

15. INDEMNIFICATION

15.1. Personal Injury and Property Damage

Each party (the “**Indemnifying Party**”) agrees to defend at its expense and indemnify and hold harmless the other party and its affiliates, directors, officers, employees, agents, successors and assigns (each an “**Indemnified Party**”), in accordance with the procedures described in this Section, from and against any and all losses, costs, damages, liabilities and expenses including without limitation, reasonable legal fees and expenses paid to or for the benefit of an unaffiliated third party (collectively, “**Losses**”) arising from or in connection with any such third party claim for: (i) the death or bodily injury of any person caused by the negligence or willful misconduct of the Indemnifying Party; or (ii) the damage, loss or destruction of any real or tangible personal property caused by the negligence or willful misconduct of the Indemnifying Party.

15.2. Infringement

Gladiator will indemnify, defend and hold You harmless for Losses You incur as a direct result of any unaffiliated third party claim based on any claim that the Service infringes any U.S. copyright, trademark or trade secret, except to the extent resulting from (i) Your modification of the Service, or combination by You of the Services with other products or services, if the Service would not have been infringing but for such combination or modification, (ii) Your use of the Service in a manner not authorized herein or for which it was not designed, (iii) Your failure to use an updated non-infringing version of the applicable intellectual property to the extent You were notified that the update cured an infringement, (iv) changes to the Service made by Gladiator at the direction of You, or (v) Your Data. If any item for which Gladiator has an indemnification obligation under this Section becomes, or in Gladiator’s reasonable opinion is likely to become, the subject of an infringement or misappropriation claim or proceeding, Gladiator will, in addition to indemnifying You as provided in this Section, promptly take the following actions, at no additional charge to You, in the listed order of priority: (a) secure the right to continue using the item or (b) replace or modify the item to make it non-infringing. If neither of such actions can be accomplished by Gladiator using commercially reasonable efforts, and only in such event, Gladiator will remove the item from the Service and the applicable Service fee will be equitably adjusted to reflect such removal. This Section 15.2 states Your sole and exclusive remedy for Gladiator’s infringement or misappropriation of intellectual property of a third party.

15.3. Your Indemnity

You shall defend and indemnify Gladiator and its Third Party Vendors against any and all Losses incurred by Gladiator and its Third Party Vendors arising out of or in connection with a claim by a third party (i) alleging that Your Data or Your Trademarks, or any use thereof, infringes the rights of, or has caused harm to, a third party, or (ii) arising out of Your breach of Sections 9.5 and 9.8.

You will indemnify, defend and hold harmless Gladiator, its affiliates, successors, and assigns, including the applicable officers, directors, employees, and agents thereof for damages, costs and attorneys’ fees Gladiator incurs from any unaffiliated third-party claim arising from Your Content, or use of the Services by You or any end user.

15.4. Indemnification Procedures

The party seeking indemnification shall give prompt notice of the claim and will tender the defense; provided, however, that such party's failure to provide notification shall not affect the indemnifying party's indemnification obligations except to the extent that the failure to notify delays or prejudices the indemnifying party's ability to defend the applicable claim. The indemnifying party shall conduct the defense and shall have control of the litigation, and the indemnified party shall cooperate in defending against the claim. The indemnified party shall have the right, at any time and at its own expense, to participate in the defense of the claim with counsel of its own choosing. The indemnifying party shall not make any settlement of the claim that results in any liability or imposes any obligation on the indemnified party without the prior written consent of the indemnified party. If the indemnifying party fails to (i) respond to the notice of a claim, or (ii) assume the defense of a claim, the party seeking indemnification shall have the right to defend the claim in such manner as it may deem appropriate, at the reasonable cost, expense, and risk of the indemnifying party, and the indemnifying party shall promptly reimburse the indemnified party for all such costs and expenses.

16. NOTICES

Except as otherwise provided in Section 9.3 above, any notice required or permitted under the terms of these Terms or required by law must be in writing and must be delivered by email whose receipt is acknowledged by an officer of the receiving Party. The proper email addresses shall be (i) for Gladiator, the email address provide on Gladiator's Portal; and for You, the primary email address used by You for accessing the Service. Notices shall be considered to have been given upon receipt of machine confirmation of successful transmission email as described herein.

17. NO ASSIGNMENT

You may not assign this Agreement without the prior written approval of Gladiator. Any purported assignment in violation of this section shall be void.

18. U.S. GOVERNMENT RESTRICTED RIGHTS

Any use of the Service by or on behalf of the United States of America, its agencies and/or instrumentalities ("U.S. Government"), is provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph I(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs I(1) and (2) of the Commercial Computer Software – Restricted Rights at 48 CFR 52.227-19, as applicable.

19. FORCE MAJEURE

Neither party will be liable to the other for any failure or delay in the performance of such party's non-monetary obligations due to causes beyond its control, such as failure or delay caused, directly or indirectly, by fire, flood, earthquakes, other elements of nature, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, epidemics, communications line or power failures, or governmental laws, court orders, and regulations imposed after the fact.

20. GENERAL PROVISIONS & BINDING ARBITRATION

Any action related to these Terms will be governed by Florida law and controlling U.S. federal law. No choice of law rules of any jurisdiction will apply. Any disputes, actions, claims or causes of action arising out of or in connection with these Terms or the Service shall be subject to the exclusive jurisdiction of the State of Florida. Any dispute arising from or related to these Terms shall first be subject to Mediation under the Mediation Rules of the American Arbitration Association and such Mediation shall take place in Brevard County, Florida. Any dispute that is not resolved between the parties or through Mediation as provided above, shall be subject to binding arbitration under the Rules of the American Arbitration Association using the Expedited Procedures for Commercial Disputes. Such arbitration shall take place in Brevard County, Florida. These Terms represents the parties' entire understanding relating to the use of the Service and supersedes any prior or contemporaneous, conflicting or additional, communications. No text or information set forth on any Purchase Order Form, preprinted form or document shall add to or vary the terms and conditions of these Terms. If any provision of these Terms is held to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between Gladiator and You as a result of these Terms or use of the Service. The failure of Gladiator to enforce any right or provision in these Terms shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Gladiator in writing. Gladiator reserves the right to assign its right to receive and collect payments hereunder. Any rights not expressly granted herein are reserved by Gladiator.