

Armory, Inc. Terms and Conditions – V

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Last updated July 6, 2022. – Copyright Armory, Inc.

These Terms and Conditions and any associated documents executed by and between the parties (collectively, the “Agreement”) govern your access to and use of Armory Services. Capitalized terms have the definitions set forth herein.

BY (1) CLICKING A BOX INDICATING ACCEPTANCE OF THIS AGREEMENT, (2) EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR (3) REGISTERING FOR AND USING THE ARMORY SERVICES, YOU AGREE TO THE TERMS OF THIS AGREEMENT. AN INDIVIDUAL ACCEPTING OR AGREEING TO THE TERMS OF THIS AGREEMENT ON BEHALF OF A COMPANY, TEAM, OR LEGAL ENTITY (THE “ENTITY”) REPRESENTS AND WARRANTS THAT THEY HAVE THE AUTHORITY TO BIND THE “ENTITY”. IN SUCH CASES, “YOU” SHALL REFER TO THE ENTITY AND ALL AUTHORIZED USERS OF THE ENTITY.

THIS AGREEMENT INCLUDES WARRANTY DISCLAIMERS, LIMITATIONS OF LIABILITY, AND AN AGREEMENT FOR BINDING ARBITRATION

Armory’s direct competitors are prohibited from accessing or using Armory Services, except with Armory’s explicit written consent. In addition, the Armory Services may not be accessed or used for purposes of monitoring their availability, performance, or functionality, for any other benchmarking, as a means to duplicate, replicate, or otherwise copy Armory Services, or for any other competitive purposes.

Definitions

The below terms shall be defined as follows.

- 1 **“Affiliate”** means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. “Control,” for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.
- 2 **“Agreement”** means these Terms and Conditions, Order Form(s) referencing these Terms and Conditions, any information contained in a website, URL or policy referenced in these Terms and Conditions, or any other associated documentation referenced herein.
- 3 **“Application Targets”** means an Application or Service being deployed to a namespace running on a cluster (calculated as application * namespace * cluster)
- 4 **“Armory Services” or “Services”** means the online, cloud-based, managed, or self hosted application and software application(s), including all relevant documentation, provided by Armory that are ordered by You under an Order Form, online purchasing portal, or are provided to You under a free trial, proof of concept, proof of value, or similar agreement.
- 5 **“Armory”** means Armory, Inc. and its affiliates
- 6 **“Authorized Users”** means any User(s) utilizing the Armory Services on behalf of an Entity that is bound by that Entity’s acceptance of this Agreement. All terms of this Agreement apply to Authorized Users
- 7 **“Customer Data”** means electronic data or information submitted or uploaded by or for You or Authorized Users, including through integrations with other systems, to the Services.
- 8 **“Documentation”** means the applicable Armory Services’ implementation and security documentation, usage guidelines, or policies, each as updated from time to time and accessible via the applicable Armory Services or expressly referenced in this Agreement.
- 9 **“Malicious Code”** means code, files, scripts, agents, or programs intended to do harm, including, for example, viruses, worms, time

bombs, and Trojan horses.

- 10 **“Order Form”** means a document, or online purchasing or registration portal, including, in either case, any addenda, documentation, and supplements thereto, that specifies the Armory Services to which You have subscribed. By entering into an Order Form hereunder, You and Your Affiliates agree to be bound by the terms of this Agreement as if each were an original party to this Agreement. “Order Form” includes registration for a free or trial tier of the Armory Services is
- 11 **“Support”** means services performed by Armory for Customer to troubleshoot or otherwise support the Armory Services. Service Level Agreement (SLA) governing the activities performed by Armory for managed and self-hosted Armory Services are detailed on Armory’s website available at <https://go.armory.io/sla>. Armory may offer varying support levels and the specific SLA and terms governing the Support will depend on the specific offering Customer chooses.
 - a **“Disaster Recovery”** and **“High Availability”** are enhanced support services that may be purchased by Customer to provide additional support for Armory managed and self-hosted products. Service Level Agreements (SLAs) for Armory Disaster Recovery and Armory High Availability are detailed on Armory’s website available at: go.armory.io/dr-ha.
- 12 **“User”** means any unique individual or automated account who connects to the Armory Services or consumes Armory Services anytime within the previous ninety (90) days by logging in to the Armory Services through a user interface, by connecting to the Armory Services via an API interface, or by triggering an event that results in a pipeline execution.
- 13 **“You”** or **“Your”** means, in the case of an individual accepting this Agreement on his or her own behalf, such individual, or, in the case of an individual accepting this Agreement on behalf of an Entity, the Entity, the Entity’s Affiliates (for so long as they remain Affiliates), and any Authorized Users associated with the Entity.
- 14 **“Your Data”** or **“Customer Data”** means electronic data and information submitted, uploaded, or otherwise provided by or for You or Users, including through integrations with other systems, to the Armory Services.

License

In exchange for your acceptance of this Agreement and payment of all applicable fees as defined in Your Order Form, Armory hereby grants you a limited, non-exclusive, non-sublicensable, non-transferable, revocable license to access and use the Armory Services. If you purchased Team or Enterprise Armory Services, You may permit Authorized Users to access or use the Armory Services, provided that any such Authorized Users also agree to and are bound by the terms of this Agreement.

Use of Armory Services

General Use Terms. You are responsible for your compliance and any Authorized User's compliance with this Agreement, Documentation, and Order Form. Entities are responsible for managing Authorized Users and Authorized User access to the Armory Services including, but not limited to, adding and removing Authorized Users from the Armory Services. You or any Authorized Users associated with your account may not:

- 1 transfer or assign any of your rights under this Agreement, except to the extent that a Team or Enterprise User may permit Authorized Users to access and make use of the Armory Services;
- 2 copy, modify or create derivative works based on the Services, Software, or Documentation, or any portion(s) of any of the foregoing
- 3 attempt to reverse engineer, decompile, access, or otherwise derive the source code or architecture of the Armory Services;
- 4 attempt to probe, scan or test the vulnerability of the Services, or to breach any security or authentication feature or measures of the Armory Services;
- 5 interfere or attempt to interfere with the Armory Services or any user, host, or network, including, without limitation, by means of load testing, overloading, flooding, spamming, mail bombing, crashing, denial of service, or other malicious computer code or software;
- 6 use the Armory Services in any way that (i) infringes any intellectual property or other proprietary rights of any party or (ii) poses or creates a privacy or security risk to any person, entity, or user;

- 7 violate any applicable law or regulations in connection with your use of the Armory Services; or
- 8 use the Armory Services in a manner that is not expressly authorized under this Agreement, an Order Form, or the Documentation.

Right to Audit. Armory reserves the right to audit your use of the Services to determine whether your use of the Armory Services complies with the terms of this Agreement.

- 1 **License Reporting.** For Armory Services that are self-hosted you agree to allow Armory to collect telemetry data for the purposes of identifying the licenses being used. If telemetry data is unavailable, at Armory's request, but in no case more than once per quarter, You agree to provide detail on the number of Users interacting with the Services and Armory may, at its discretion, require Customer to reduce its usage to its agreed to number of Users or, if Customer's usage cannot be reduced to the licensed number of Users, charge Customer for any overage at the then market rate, unless a different rate is agreed to by the parties. Any licenses added pursuant to this section shall be coterminous with the remainder of Customer's licenses and shall be billed on a pro-rata basis.

Third party providers. Armory may use Stripe, Inc. and its affiliates as a third party service provider for payment services (e.g., card acceptance, merchant settlement, and related services) (a "Payment Processor"). By making or accepting any payments via the Services, you agree to be bound by Stripe's Privacy Policy (currently accessible at <https://stripe.com/us/privacy>) and its Terms of Service (currently accessible at <https://stripe.com/us/terms>) and hereby consent and authorize Armory and Stripe to share any information and payment instructions you provide with one or more third parties to the minimum extent required to complete your transactions. By making payments on our Website, you also agree to be bound by Stripe's services agreement at: <https://stripe.com/us/legal/> and Stripe's connect agreement at: <https://stripe.com/connect-account/legal>.

Account and Environment Security

You are responsible for the security and proper use of your account, all user IDs, passwords, environments, or other security devices used in connection with the Armory Services, and shall take all reasonable steps to ensure that they are kept confidential and secure, are used properly and are not disclosed to or used by any other person or entity. You shall immediately notify Armory if there is any reason to believe that a user ID, password, or other security device associated with your account or an Authorized User has or is likely to become known to someone not authorized to use it, or is being or is likely to be used in an unauthorized way.

Customer Data

Your Responsibilities: You are solely responsible for your Customer Data. By importing, storing, or processing Customer Data with the Armory Services, You affirm, represent, and warrant that:

- 1 You are the creator and owner of, or has the necessary licenses, rights, consents, and permissions to use and to authorize Armory and Users of the Service to use and distribute Customer Data and as necessary to exercise the licenses granted by You in this Agreement;
- 2 Customer Data, and the use thereof as contemplated herein, does not and will not infringe, violate, or misappropriate any third-party right, including any copyright, trademark, patent, trade secret, moral right, privacy right, right of publicity, or any other intellectual property or proprietary right;
- 3 You are allowed it to provide Customer Data to Armory and permit Armory to use, store, and disclose such Customer Data as contemplated herein; and
- 4 Customer Data does not include any information constituting “personal information” within the meaning of the California Consumer Privacy Act of 2018, Cal. Civ. Code §§ 1798.100 – 1798.199 (“CCPA”) and all rules and regulations implementing or interpreting the CCPA (together with the CCPA, the “California Consumer Privacy Laws”).

Third Party Hosting. Armory stores and processes Customer Data and

provides the Services through a third party's hosting services in the USA. If You are in the European Economic Area, or in any other jurisdiction that regulates the transfer of personal information outside that jurisdiction, then You hereby grant Armory its explicit and unambiguous consent to transfer any personal information contained in Your Customer Data to the United States of America, for the purposes described in this Agreement.

License Grant. You grant Armory a limited, worldwide, non-exclusive, royalty-free, license to your User Data for the limited purposes of:

- 1 operating and improving the Services;
- 2 protecting the Services (for example, we may analyze patterns in usage to prevent abuse);
- 3 creating analytics and metrics;
- 4 customizing the Services;
- 5 developing new technologies and services; and
- 6 transmitting or providing Customer data to third party services for the sole purpose of providing the Services.

Intellectual Property

- 1 **Armory Intellectual Property:** Armory alone shall own all right, title and interest, including all related Intellectual Property Rights in and to the Services, Armory trademarks, logos, and Armory technology. The Armory name, Armory logo, and the product names associated with the Services are trademarks of Armory or third parties, and no right or license is granted to use them.
- 2 **Customer Reference.** Customer agrees that Armory may use the Customer name and logo on the Armory website and in Armory marketing materials solely for marketing the Services.
- 3 **Feedback.** Armory shall retain all right and title to any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by You or any other party relating to the Services (collectively, "Feedback") and any enhancements or changes to the Services that result from such Feedback. In the event all or a portion of the original right or title cannot legally vest with Armory, You hereby grant a non-exclusive, worldwide, perpetual,

irrevocable, royalty-free, transferable, and assignable license to use and incorporate into the Services any Feedback you provide.

Confidentiality

- 1 Definition.** As used herein, “**Confidential Information**” means all confidential information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or written, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Customer Confidential Information shall include the Customer Data; Armory’s Confidential Information shall include the Service and the Armory Technology; and Confidential Information of each party shall include the terms and conditions of this Agreement and all Orders, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party.
- 2 Exclusions.** Confidential Information (other than Customer Data) shall not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.
- 3 Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, (i) the Receiving Party shall protect the Disclosing Party’s Confidential Information by using the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care), and shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of these Terms, and (ii) the Receiving Party shall limit access to Confidential Information of the Disclosing Party to those of its employees, contractors and agents who need such access for purposes consistent with these Terms and who are bound by confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. You hereby

acknowledge that the Armory Technology is highly confidential, and undertake that, at all times, You: (i) shall treat and maintain the Armory Technology as confidential, and hold all such Armory Technology in trust and in strict confidence, utilizing the same degree of care You uses to protect its own confidential information, but in no event less than a reasonable degree of care; (ii) shall not disclose the Armory Technology to any third party, whether or not for consideration; and (iii) exploit the Armory Technology for the benefit of anyone else, without the prior written consent of Armory.

- 4 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if it is compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to such Confidential Information.
- 5 No License.** Except as expressly set forth herein, no license or other rights to Confidential Information are granted or implied hereby by either party.

Fees and Payments

- 1 Current Pricing.** Current pricing can be found at Armory's pricing page accessible at <https://www.armory.io/pricing/>.
- 2 Fees.** You shall pay any and all applicable fees or charges ("Fees") you agreed to when registering for the Services or as specified on an Order Form in accordance with the fees, charges, and billing terms in effect at the time a fee or charge are due and payable. The basis for any fees charged will be identified on the applicable order page or Order Form. If You elect annual billing or agree to specific invoicing terms with Armory as identified on an applicable Order Form, Armory will invoice you in advance for the Services, and payment of Fees will be due within 30 days after the date of the invoice. Armory will

automatically renew and bill Your credit card or issue an invoice to You for any applicable billing period, or as otherwise mutually agreed upon. Fees will be charged in US Dollars or such other method as specified in the Order Form. You are responsible for paying any applicable Fees during the applicable billing period. If you elect monthly billing, Armory shall invoice and collect any fees due on a monthly by charging the payment method you elected when registering for monthly billing.

- 3 Pricing confidentiality.** All pricing terms that are not listed on Armory's publicly available websites or marketing materials are confidential, and You agree not to disclose them to any third party. All payment obligations are non-cancelable and all amounts paid are non-refundable whether or not such licenses are actively used.
- 4 Taxes:** Armory's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and You shall be responsible for payment of all such taxes, levies, or duties, excluding only taxes based solely on Armory's net income. You will make all payments of fees to Armory free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of fees to Armory will be Your sole responsibility, and You will provide Armory with official receipts issued by the appropriate taxing authority, or such other evidence as Armory may reasonably request, to establish that such taxes have been paid. You shall indemnify and defend Armory in connection with any proceedings brought by any taxing authorities in connection with this Agreement based on Your failure to comply with this provision.
- 5 Your Billing Information.** You agree to provide Armory with complete and accurate billing and contact information as shall be requested by Armory. You agree to update this information within thirty (30) days of any change to it. If the contact information You provide is false or fraudulent, Armory reserves the right to terminate Your access to the Service in addition to any other legal remedies. If You believe an invoice is incorrect, You must contact Armory in writing within seven (7) days after receiving the invoice or within thirty (30) days of the invoice date, whichever is earlier, regarding the invoice containing the amount in question to be eligible to receive an adjustment or credit. Unless otherwise stated in an Order Form, invoiced charges are due thirty (30) days from the invoice date. If Your payment method fails or Your accounts are past due, (a) You

agree to pay all amounts due upon demand by Armory, (b) Armory may collect Fees owed using other collection mechanisms (including charging other payment methods You may have on file with Armory), (c) Armory reserves the right to either suspend Your access to the Service, and (d) You agree to pay a late fee of 1.5% per month, or the maximum charge permitted by law, whichever is less.

- 6 Payment Disputes.** Armory shall not exercise its rights under this Section with respect to those charges that are under reasonable and good faith dispute and for which Customer are cooperating diligently to resolve the dispute.

Modification of the Armory Services and Terms and Conditions.

- 1 Armory is constantly improving its Services in order to provide the best possible experience for its users. You acknowledge that Armory may change the form and nature of the Armory Services without prior notice to you. Changes to the Armory Services will be effective with respect to all versions of the Services and may include changes to the cloud bases Services, managed Services, or self hosted Services.. Your continued use of the Armory Services constitutes an acceptance of those changes.
- 2 Armory may from time to time update or revise this Agreement. If Armory updates or revises this Agreement, Armory will notify you either by email to your most recently provided email address, by posting the updated or revised Terms of Service and any other applicable terms on Armory's website or the Armory Services, or by any other manner chosen by Armory in its commercially reasonable discretion. Your use of the Services following a reasonable time after any such update or revision constitutes your agreement to be bound by and comply with this Agreement as updated or revised. It is your responsibility to review the Terms of Service and other applicable terms or documents periodically.

Term and Termination

- 1 Term.** This Agreement commences upon your acceptance, as defined herein, of this Agreement or as defined on an applicable Order Form and shall remain in effect for such term as set forth in the applicable Order Form or until all subscriptions purchased in accordance with this Agreement or an Order Form have expired or been terminated. The initial term of this Agreement shall continue for the subscription term specified on any applicable Order Form (“Initial Term”). Cancellation of a subscription that results in Your account reverting to a free or trial tier of the Services does not constitute a termination under this provision and You may continue to use the Services in accordance with this Agreement, subject to the limitations imposed on the free or trial tiers of the Service.
- 2 Renewal.** Except as otherwise specified in the applicable Order, all subscriptions shall automatically renew for additional periods equal to the expiring subscription term unless either party gives the other notice of non-renewal at least thirty (30) days before the end of the relevant subscription term (the “Renewal Term”) or cancels Your subscription through the relevant payment or subscription portal. You will not receive any refunds due to early account termination.
- 3 Termination for Cause.** A party may terminate this Agreement for cause: (i) upon thirty (30) days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Any breach of Your payment obligations, unauthorized use of the Service, or other failure by You to comply with the terms of this Agreement will be deemed a material breach of this Agreement and will entitle Armory, without derogating from any other remedies available to it, to immediately suspend or terminate this Agreement or any Order with no liability or refund to You, and You shall be required to pay all unpaid fees for the remainder of the term of the Order after the effective date of termination. In no event shall any termination relieve You of the obligation to pay any fees payable to Armory for the period prior to the effective date of termination. Notwithstanding the foregoing, Armory reserves the right to immediately suspend or

terminate Your use of the Services or remove Customer Data from the Service, without notice, in instances where such continued use would violate applicable law or have a material adverse effect on Armory. Termination of this Agreement or an Order Form shall be without prejudice to the survival of provisions in this Agreement which by their nature survive termination.

- 4 Effect of Termination.** Upon termination, Your access to the Service will be disabled and all Customer Data that can reasonably be deleted may be deleted at Armory's sole discretion. Once deleted, this information cannot be recovered. Armory shall have no obligation to maintain any Customer Data and may, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control. You may explicitly request that your data be deleted or removed from Armory's systems by contacting Armory Support at armory.support@armory.io. Armory will make efforts to remove or delete all Your data within a commercially reasonable period of time following a termination and to the extent reasonably possible. You agree that it is Your responsibility to remove any billing or payment information in the possession of Stripe by utilizing Stripe's customer portal.

DISCLAIMER OF WARRANTIES

- 1 NOTHING IN THESE TERMS SHALL EXCLUDE OR LIMIT ARMORY'S WARRANTY OR LIABILITY FOR LOSSES WHICH MAY NOT BE LAWFULLY EXCLUDED OR LIMITED BY APPLICABLE LAW.
- 2 YOU EXPRESSLY UNDERSTAND AND AGREE THAT USE OF THE SERVICES IS AT YOUR SOLE RISK AND THAT THE SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS.
- 3 ARMORY, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS MAKE NO EXPRESS WARRANTIES AND DISCLAIM ALL IMPLIED WARRANTIES REGARDING THE SERVICES, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY,

FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ARMORY, ITS SUBSIDIARIES AND AFFILIATES, AND ITS LICENSORS DO NOT REPRESENT OR WARRANT TO YOU THAT: (A) YOUR USE OF THE ARMORY SERVICES WILL MEET YOUR REQUIREMENTS OR (B) YOUR USE OF THE ARMORY SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS. TO THE EXTENT YOU RESIDE IN SUCH A STATE OR JURISDICTION, THE FOREGOING SHALL APPLY TO THE MAXIMUM EXTENT POSSIBLE WHILE STILL COMPLYING WITH APPLICABLE LAWS AND REGULATIONS. SHOULD ANY OF THE FOREGOING DISCLAIMERS OF WARRANTIES BE HELD INVALID, ALL REMAINING DISCLAIMERS AND PROVISIONS OF THIS AGREEMENT SHALL REMAIN IN FULL FORCE AND EFFECT.

- 4 Except as otherwise set forth herein, Armory expressly disclaims any and all liability in connection with Customer Data. Armory is under no obligation to edit or control Customer Data that Customer imports to or makes available through the Services. Armory reserves the right to immediately suspend Customer's use of the Services or, at any time, to remove any Customer Data, with concurrent notice (and provided that Armory shall endeavor to provide prior notice when possible or permitted), in instances where failure to immediately suspend such access or remove such Customer Data would violate applicable law, or cause a material and incurable harm to the rights of a third party or Armory.

LIMITATION OF LIABILITY.

- 1 **Basis of the Bargain.** The parties agree that the limitations of liability set forth in this section shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and this Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain

between the parties.

- 2 Exclusions.** Armory shall have no responsibility or liability of any kind, whether for breach of warranty or otherwise, arising or resulting from: (a) any problems which are not considered errors by Armory; (b) problems caused by failure of Internet connections, hardware, software, or equipment which is not owned, controlled, or operated by Armory; (c) nonconformities resulting from misuse, abuse, negligence, or improper or unauthorized use of all or any part of the Services; (d) problems or Errors caused by Your or other third party's products, services or equipment; (e) modification, amendment, revision, or change to the Software or the Services by any party other than Armory; or (f) any alleged infringement of third-party intellectual property rights resulting from the combination of Your Customer Data or actions, that, in the absence of your Customer Data or Actions, would not constitute infringement. Any use of or reliance on data or data output contained in the Services is Your sole responsibility.
- 3 Types of Damages.** TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, ARMORY OR ITS SUBSIDIARIES, AFFILIATES, OR SUPPLIERS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, BUT NOT LIMITED TO DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, REVENUE, GOODWILL, PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN CONNECTION WITH ARMORY'S PERFORMANCE HEREUNDER OR THE USE, MISUSE, OR INABILITY TO USE THE SOFTWARE, DOCUMENTATION, SERVICES OR OTHER PRODUCTS OR SERVICES HEREUNDER, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF ARMORY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES OR SHOULD HAVE BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES.
- 4 Amount of Damages.** THE MAXIMUM LIABILITY OF ARMORY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO ARMORY DURING THE TWELVE (12) MONTHS

PRECEDING THE ACT, OMISSION OR OCCURRENCE GIVING RISE TO SUCH LIABILITY. IN NO EVENT SHALL ARMORY'S SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT. NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE ARMORY'S LIABILITY FOR GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF ARMORY OR ITS EMPLOYEES OR AGENTS OR FOR DEATH OR PERSONAL INJURY. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO YOU.

Indemnification

- 1 Mutual Indemnification.** Each party (the "**Indemnifying Party**") shall defend indemnify and hold harmless the other party, including Affiliates and each of their respective officers, directors, shareholders, employees, representatives, agents, successors and assigns (the "**Indemnified Party**") from and against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("**Claims**") made or brought against the Indemnified Party by a third party to the extent arising out of (a) the Indemnifying Party's gross negligence or willful misconduct in performing any of its obligations under this Agreement, or (b) a material breach by the Indemnifying Party of any of its representations, warranties, covenants or agreements under this Agreement.
- 2 Indemnification by Armory.** Armory will indemnify You against Claims made or brought against You by a third party alleging that the use of the Services as contemplated hereunder infringes the patent, copyright, trade secret or intellectual property or proprietary rights of such third party. Armory will not indemnify you If the claim is brought as a result of Your actions or improper use of the Services where but-for those actions or use a claim would not exist. If a court of competent jurisdiction or Armory reasonably determines that any third-party infringement Claim prevails or is likely to prevail, Armory may, at Armory's sole discretion and expense: (i) procure for You the right to continue using the Services under the terms of this

Agreement; (ii) replace or modify the Services to be non-infringing without material decrease in functionality; or (iii) if the foregoing options are not reasonably practicable, terminate the license for the infringing Services and relieve You of any obligation to pay fees for the remainder of the term following the effective date of termination.

- 3 Conditions for Indemnification.** As a condition to indemnification as set forth in herein, the Indemnified Party will: (a) provide the Indemnifying Party with written notice of the Claim; (b) give the Indemnifying Party control of the defense and settlement of the Claim (provided that Indemnifying Party may not settle any Claim unless it unconditionally releases the Indemnified Party of all liability); and (c) provides to Indemnifying Party, at Indemnifying Party's cost, all reasonable assistance.

Notice

Armory may give You notice by means of a general notice on the Services, electronic mail to Your e-mail address on record in Armory's account information, or by written communication sent by first class mail or pre-paid post to Your address on record in Armory's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Armory (such notice shall be deemed given when received by Armory) at any time via Armory's contact details as they appear at the Armory official website, addressed to the attention of Armory Legal.

Consent to receive email.

- 1 For users located outside of the European Economic Area (EEA):** Your registration to use the Services constitutes your consent to receive email communications from Armory, including messages regarding customer service issues and other matters. You may opt not to receive email correspondence, other than technical notifications and email regarding issues related to your account and your use of the Services, at any time by following the link included in the email messages or by providing Armory notice under this

Agreement.

- 2 For users located in the European Economic Area (EEA):** We only send marketing communications to users located in the European Economic Area (EEA) with your prior consent, and you may withdraw your consent at any time by clicking the “unsubscribe” link found within Armory emails or by providing Armory notice under this Agreement. Please note you will continue to receive transactional messages related to our Services, even if you unsubscribe from marketing emails.

Additional Terms

- 1 Governing Law; Arbitration.** This Agreement shall be exclusively governed by the laws of the State of California, USA, without regard to the choice or conflicts of law provisions thereof, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the courts of San Mateo County in the State of California, USA. Any controversy or claim arising out of or relating to this Agreement, its enforcement, arbitrability or interpretation shall be submitted to final and binding arbitration, to be held in San Mateo County, California, before a single arbitrator who shall be a retired judge, in accordance with California Code of Civil Procedure §§ 1280 et seq. The arbitrator shall be selected by mutual agreement of the parties or, if the parties cannot agree, then by striking from a list of arbitrators supplied by the American Arbitration Association or JAMS. The arbitration shall be a confidential proceeding, closed to the general public. The arbitrator shall issue a written opinion stating the essential findings and conclusions upon which the arbitrator’s award is based. The parties will share equally in payment of the arbitrator’s fees and arbitration expenses and any other costs unique to the arbitration hearing (recognizing that each side bears its own deposition, witness, expert and attorneys’ fees and other expenses to the same extent as if the matter were being heard in court).
- 2 UCITA Disclaimer.** It is the intent of the parties that the Uniform Computer Information Transactions Act (“UCITA”) shall not apply to or govern this Agreement or any agreement or transaction between the parties.

- 3 No Class Actions.** YOU AND ARMORY AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ARMORY'S INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING
- 4 Entire Agreement.** No text or information set forth on any other purchase order, preprinted form, or document (other than an Order Form, if applicable and where expressly stated that it amends or deviates from the terms of this Agreement) shall add to or vary the terms and conditions of this Agreement. This Agreement, together with any applicable Order Form, comprises the entire Agreement between the parties and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.
- 5 Waiver and Amendment.** No waiver, amendment, or modification of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the waiver, amendment, or modification is sought to be enforced. No failure or delay by either party in exercising any right, power, or remedy under this Agreement shall operate as a waiver of any other right, power, or remedy. No waiver of any term, condition, or default of this Agreement shall be construed as a waiver of any other term, condition, or default.
- 6 Severability.** If any provision of this Agreement is held by a court or arbitration panel of competent jurisdiction to be invalid or unenforceable, then such provision shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision, with all other provisions remaining in full force and effect.
- 7 Relationship of the Parties.** No joint venture, partnership, employment, or agency relationship exists between the parties as a result of this Agreement or use of the Service. Neither party shall hold itself out contrary to the terms of this Section 13.6. Neither party shall be liable to third parties for the representations, acts, or omissions of the other party to the terms of this Agreement.
- 8 Assignment.** This Agreement is binding upon and inures to the benefit of the successors and assigns of the parties, provided that there may be no assignment or transfer of rights or obligations under this Agreement by either party without the prior consent of the other party. Notwithstanding the foregoing, either party may assign its rights and obligations under this Agreement to its Affiliate or in

connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

- 9 Headings.** Use of paragraph headers in the Agreement is for convenience only and shall not have any impact on the interpretation of particular provisions.
- 10 No Third-Party Rights.** This Agreement is not for the benefit of any third party and shall not be deemed to grant any right or remedy to any third party, whether or not referred to in this Agreement.
- 11 Survival.** The representations and warranties of the parties contained in this Agreement, as well as the provisions of this Agreement respecting confidentiality and indemnification, shall survive the end of the term of this Agreement.
- 12 Notice for California Users.** Under California Civil Code Section 1789.3, users of the Services from California are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210. You may contact Armory at the address listed on the Armory official website