

Professional Services Terms and Conditions

THIS PROFESSIONAL SERVICES TERMS AND CONDITIONS (“**AGREEMENT**”) GOVERNS YOUR PURCHASE AND OUR DELIVERY OF OUR PROFESSIONAL SERVICES. BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING AN ASSOCIATED BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING A STATEMENT OF WORK OR ORDER FORM THAT REFERENCES AND IS EXPRESSLY SUBJECT TO THIS AGREEMENT (EACH, AN “**SOW**”), YOU AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU ARE ENTERING THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO AND DO BIND SUCH COMPANY OR ENTITY, AND ITS AFFILIATES, TO THESE TERMS AND CONDITIONS (IN WHICH CASE THE TERMS “YOU” OR “YOUR” SHALL REFER TO SUCH COMPANY OR ENTITY AND ITS AFFILIATES). IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT RECEIVE THE PROFESSIONAL SERVICES.

This Agreement is effective and applicable between you and Aerohive Networks as of the date of your accepting of an SOW, and shall apply for the term of such SOW.

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In addition to the terms expressly defined above, the following terms used in this Agreement shall have the following definitions. Terms used but not otherwise defined in an SOW, shall also be given the definition and meaning provided in this Agreement. Except to the extent expressly otherwise provided in an SOW, the terms and conditions of this Agreement shall apply to and control the delivery of Services and the Parties rights and liabilities under an SOW.

1. DEFINITIONS

“Aerohive,” “our,” “us,” or “we” means and references Aerohive Networks, Inc., and its Affiliates.

“Affiliate” means any entity which You, directly or indirectly, control, or which controls You, or is under common control with You.

“Change Order” means any change to an SOW, as applicable, as described in the “Change Orders” section below. Change Orders will be deemed incorporated by reference in the applicable SOW, as applicable.

“Deliverable” means a deliverable under an SOW.

“Party” or “Parties” means and references, either or together, and as the case may be, You and Aerohive.

“Services” means, as applicable, product services Aerohive hosts and associated offline components we make available, professional services or otherwise work we perform (including our provision of any Deliverables), in each case as described and provided in an SOW.

“You” or “Your” means and references the company or other legal entity for which you are accepting this Agreement together with Affiliates of that company or entity which have signed an applicable SOWs.

2. SERVICES

2.1 Scope of Services

We will provide to You the Services specified in each SOW, as applicable, subject to Your cooperation and payment of all applicable fees, as set forth below.

2.2 Relationship to Purchase of Product or Associated Support

This Agreement is limited to your purchase and our delivery of Services and does not convey any right to You or liability to Us with regard to Your purchase or use of Aerohive products or associated support or licenses. Any purchase or use by You of Aerohive products or associated support or licenses will be governed by a separate agreement, including our End User License Agreement (a copy of which may be found at <https://www.aerohive.com/wp-content/uploads/Aerohive-End-User-License-Agreement.pdf>). You agree also that Your purchase of Services is not contingent on the delivery of any future product or product functionality or features, other than Deliverables, subject to the terms of the applicable SOW, or on any oral or written public comments by Us regarding future product or product functionality or features.

3. COOPERATION

3.1 Cooperation

You will cooperate at your sole expense and liability, and reasonably and in good faith, with Us in Our performance of Services by, without limitation:

- (a) allocating sufficient resources and timely performing any tasks reasonably necessary to enable Us to perform Our obligations under each SOW;
- (b) timely delivering any materials and other obligations required under each SOW;
- (c) timely responding to Our inquiries related to the Services;
- (d) assigning an internal project manager for each SOW to serve as a primary point of contact for Us;
- (e) actively participating in scheduled project meetings;
- (f) providing, in a timely manner and at no charge to Us, access to Your appropriate and knowledgeable employees and agents (and, where reasonably necessary, Your facilities), and continuous administrative access to Your Aerohive product account, and coordination of onsite, online and telephonic meetings all as reasonably required by Us; and
- (g) complete, accurate and timely information, data and feedback all as reasonably required.

3.2 Delays

Any delays You cause in the performance of Services or delivery of Deliverables may result in additional applicable charges for resource time.

4. DELIVERY, ACCEPTANCE AND CHANGE ORDERS

4.1 Delivery of Services

We will provide the Services, including any Deliverables, in accordance with the Agreement and the applicable SOWs.

4.2 Acceptance

Upon completion of each Deliverable We will, as applicable: (a) submit a complete copy to You; and (b) at Your request, demonstrate its functionality to You. You are responsible for reviewing and testing all Deliverables in accordance with such SOW pursuant to acceptance criteria or test plans, if any, for such Deliverable and set forth in the SOW. To the extent provided in the applicable SOW, You will provide Us with prompt written notification of acceptance for each Deliverable; however, where acceptance is required, Your failure to reject a Deliverable, as set forth below, will be deemed acceptance. If You, in Your reasonable and good faith judgment, determine that any submitted Deliverable does not satisfy the agreed-upon acceptance criteria as specified in the applicable SOW, You must so notify Us in writing within 10 business days after Our submission of the Deliverable, specifying the deficiencies in detail. In this instance, We will use commercially reasonable efforts to correct such deficiencies and resubmit the Deliverable to You as soon as practicable. You will again review and test the Deliverable against the agreed-upon acceptance criteria, and detail any deficiencies to Us in writing within 10 business days after resubmission of the Deliverable. If a Deliverable fails to meet the functional requirements specified in the applicable SOW after its second resubmission to You, You may either, as Your sole and exclusive remedy: (i) again reject the Deliverable and return it to Us for further correction and resubmission in accordance with the process described above (if the Deliverable is not accepted after two resubmissions, the matter will be escalated to Your executive sponsor for the project associated with the SOW and Our Engagement Manager) or (ii) terminate the relevant SOW with respect to such Deliverable immediately upon written notice and recover the Fees paid under such SOW and associated with such Deliverable. If the Parties determine that a Deliverable's functional requirements specified in a SOW require modification (for example, due to incorrect assumptions or changed requirements), they will cooperate in good faith to execute a Change Order for such revised requirements.

4.3 No Effect on Warranty Remedies

Acceptance of Services, including a Deliverable, will not affect Your rights or remedies under the **"Warranty"** section below.

4.4 Change Orders

Changes to an SOW will require a written Change Order signed by the Parties prior to implementation of the changes. Such changes may include, for example, changes to the scope of work and any corresponding changes to the estimated fees and performance schedule.

5. FEES, INVOICING, AND TAXES

5.1 Fees

You will pay Us for the Services at the rates specified in the applicable SOW, or if no rate is specified in the SOW, Our standard rates in effect at the time the SOW is executed. We provide Services on either a time-and-materials or fixed-fee basis, as provided in an SOW. Any amount set forth in a time-and-materials SOW is solely a good-faith estimate which we provide as a convenience for Your budgeting and Our resource scheduling purposes and is not a guarantee that the work will be completed for that amount; the actual amount and the Fees You owe may be higher or lower. If We exceed in performing the work the Fee amount we estimate in the SOW, We will continue to provide Services under the same rates and terms and You will owe us the total amount therefor. We will periodically and upon Your request update You on the status of the Services and the Fees accrued and payable by You under SOWs.

5.2 Incidental Expenses

You will also owe and agree to pay to Us reasonable travel and out-of-pocket expenses associated with the Services, which are in addition to the Fees.

5.3 Invoicing and Payment

We will invoice You for charges for fixed-fee engagements in advance, in the manner as provided in the SOW, as applicable, unless otherwise expressly stated therein. Invoiced amounts will be due and payable net 30 days from date of Our invoice. You are responsible for providing Us with Your complete and accurate billing and contact information and notifying Us of any changes to such information.

5.4 Overdue Charges

Subject to the *"Payment Disputes"* section, if You do not pay any invoiced amount by the due date, then without limiting Our rights or remedies, (a) those charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, and/or (b) We may condition future purchases of Services on payment terms shorter than those specified in Section 5.3 (Invoicing and Payment).

5.5 Suspension of Services

Subject to the *"Payment Disputes"* section, if any amount owing by You under this or any other agreement for our Services is 30 days or more overdue, We may, without limiting Our other rights and remedies, suspend Our performance of Services until such amounts are paid in full.

5. **FEES, INVOICING, AND TAXES (CONTINUED)**

5.6 Payment Disputes

We will not exercise Our rights under the “Overdue Charges” or “Suspension of Services” sections, above if You are disputing the applicable charges reasonably and in good faith, have promptly and with reasonable detail identified to Us in writing such dispute, and are cooperating diligently to resolve the dispute.

5.7 Taxes

Our fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, “**Taxes**”). You are responsible for paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible under this section, We will invoice You and You will pay that amount, unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. For clarity, We are solely responsible for taxes assessable against Us based on Our income, property and employees.

6. **PROPRIETARY RIGHTS AND LICENSES**

6.1 Your Intellectual Property

You do not grant to Us any rights in or to Your intellectual property except such licenses as may be required for Us to perform the Services and Our other obligations hereunder.

6.2 Confidential Information

As between the Parties, each Party retains all ownership rights in and to its Confidential Information.

7. **CONFIDENTIALITY**

7.1 Definition of Confidential Information

“**Confidential Information**” means all information disclosed by a party (“**Disclosing Party**”) to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information of each Party includes the terms and conditions of this Agreement and all SOWs (including pricing), as well as business and marketing plans, strategies, data, technology and technical information, product plans and designs, and business processes disclosed by such Party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation by the Receiving Party 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 by the Receiving Party from a third party without breach of any obligation the Receiving Party owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

7.2 Protection of Confidential Information

The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither Party will disclose the terms of this Agreement or any SOW to any third party other than its Affiliates, legal counsel and accountants without the other Party’s prior written consent, provided that a Party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this “Confidentiality” section.

7.3 Compelled Disclosure

The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the 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 that Confidential Information.

8. REPRESENTATIONS, WARRANTIES, EXCLUSIVE REMEDIES, AND DISCLAIMERS

8.1 Representations

Each Party represents that it has validly entered into this Agreement and has the legal power to do so.

8.2 Warranty

We warrant that the Services will be performed in a professional and workmanlike manner as defined in the SOW. For any breach of the above warranty, Your exclusive remedy and Our entire liability will be the re-performance of the applicable Services. You must make any claim under the foregoing warranty to Us in writing within 90 days of performance of such Services in order to receive warranty remedies.

8.3 Disclaimer

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND NEITHER PARTY MAKES ANY OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

9. INDEMNIFICATION

9.1 Indemnification by Us

We will defend, indemnify and hold You harmless against, including at Our option settle, any claim, demand, suit or proceeding made or brought against You by an unaffiliated third party to the extent asserting (a) that Our personnel in their performance of the Services caused death, personal injury or damage to tangible property, (b) a breach of a material obligation We have under this Agreement or applicable law, or (c) that the Services infringe a valid U.S. patent, copyright or trade secret (each a **"Claim"** and the last of which an **"IP Claim"**), including with respect to any damages, attorneys fees and costs finally awarded against You as a result of, or for amounts paid by You under a settlement We approve in advance in writing, of any such Claim; provided that You: (a) promptly give Us written notice of the Claim; (b) give Us sole control of the defense and settlement of the Claim (except that We may not settle any Claim unless it unconditionally releases You of all liability); and (c) give Us all reasonable assistance, at Our cost. The above defense and indemnification obligations do not apply to the extent a Claim arises from Your breach of this Agreement or applicable SOW.

In the event of an IP Claim, then We may, in Our sole discretion, obtain the right for You to continue to use the Services, modify the Services so that they are no longer infringing, or require that You no longer use the Services (in which instance We will refund to You the amount You paid for such Services no longer available for Your use).

We shall have no liability or obligation for any IP Claim, hereunder or otherwise, to the extent resulting from or caused by: (x) use or combination of the Services with any other goods or services We have not supplied or provided; or (y) any modification or alteration of the Services by a party other than ourselves; or (z) Your failure to use updates or modifications to the Services We may provide, to the extent such updated or modified Services would have avoided the IP Claim and We offered the updated or modified Services to You at no charge. The foregoing expresses Your sole remedy, and Our sole liability, hereunder or otherwise, for any claim of infringement, including any IP Claims.

9.2 Indemnification by You

You will defend, indemnify and hold Us harmless against, including at Your option settle, any claim, demand, suit or proceeding made or brought against Us by an unaffiliated third party to the extent asserting (a) a breach of a material obligation You have under this Agreement or applicable law, including with respect to any damages, attorneys fees and costs finally awarded against Us as a result of, or for amounts paid by Us under a settlement You approve in advance in writing, of any such Claim; provided that We: (a) promptly give You written notice of the Claim; (b) give You sole control of the defense and settlement of the Claim (except that You may not settle any Claim unless it unconditionally releases Us of all liability); and (c) give You all reasonable assistance, at Your cost. The above defense and indemnification obligations do not apply to the extent a Claim arises from Our breach of this Agreement or applicable SOW.

9.3 Exclusive Remedy

This *"Indemnification"* section states the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against, the other Party under this Agreement or otherwise under applicable law, for any type of Claim described in this section (including any IP Claim).

10. LIMITATION OF LIABILITY

10.1 *Limitation of Liability*

IN NO EVENT SHALL THE AGGREGATE LIABILITY TO THE OTHER OR ITS AFFILIATES OF EACH PARTY TOGETHER WITH ALL OF ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT PAID BY YOU AND YOUR AFFILIATES HEREUNDER FOR THE SOW OUT OF WHICH THE LIABILITY AROSE. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, BUT WILL NOT LIMIT YOUR AND YOUR AFFILIATES' PAYMENT OBLIGATIONS UNDER THE "FEES AND PAYMENT" SECTION ABOVE.

10.2 *Exclusion of Consequential and Related Damages*

IN NO EVENT WILL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY TO THE OTHER OR ITS AFFILIATES ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOST PROFITS, REVENUES, GOODWILL, OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL COVER, BUSINESS INTERRUPTION, OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT, AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

11. TERM AND TERMINATION

11.1 *Term*

This Agreement will remain in effect until terminated in accordance with this section.

11.2 *Termination for Convenience*

Either Party may terminate this Agreement at any time for convenience upon 10 days' written notice to the other. To the extent there are SOWs in effect when a Party terminates this Agreement, such SOWs shall continue to be governed by this Agreement as if it had not been terminated until such SOW expires or terminates by its terms. You may terminate an individual SOW for convenience to the extent set forth in such SOW.

11.3 *Termination for Cause*

A Party may terminate this Agreement and/or any SOW for cause: (i) upon 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) 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.

11.4 *Payment Upon Termination*

Upon any termination of an SOW, whether for cause or convenience, You will pay, in accordance with the Invoicing and Payment section of this Agreement, any unpaid fees and expenses incurred on or before the applicable termination date (such Services fees to be calculated, as applicable, on a time-and-materials or percent-of-completion basis). In the event that You terminate an SOW for cause and You have pre-paid any fees for Services not yet received, We will refund such pre-paid fees to the extent of such Services not-yet-received. In the event that We terminate an SOW for cause, any pre-paid fees for Services charged on a fixed-fee basis but not-yet-delivered are non-refundable, unless expressly stated otherwise in an SOW.

11.5 *Surviving Provisions*

The sections titled "*Contract Property*," "*Confidentiality*," "*Representations, Warranties, Exclusive Remedies and Disclaimers*," "*Fees, Invoicing and Taxes*," "*Indemnification*," "*Limitation of Liability*," "*Term and Termination*," and "*General*" will survive any termination or expiration of this Agreement.

12. INSURANCE

Each Party will maintain, at its own expense during the term of this Agreement or applicable SOW, insurance appropriate to its obligations under this Agreement, including as applicable general commercial liability, errors and omissions, employer liability, automobile insurance and worker's compensation insurance as required by applicable law.

13. GENERAL PROVISIONS

13.1 Compliance with Laws

Each Party will comply with all laws and governmental rules and regulations that apply to such Party's performance of its obligations and exercise of its rights, under this Agreement.

13.2 Export Compliance

The Services, including Deliverables We make available, and derivatives thereof may be subject to export laws and regulations of the United States and other jurisdictions. Each Party represents that it is not named on any U.S. government denied-party list. Neither Party will access or use any Deliverables or Confidential Information provided to it hereunder in a U.S.-embargoed country or region (currently the Crimea region, Cuba, Iran, North Korea, Sudan or Syria) or in violation of any U.S. export law or governmental regulation.

13.3 Anti-Corruption

Neither Party has received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from an employee or agent of the other Party in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction.

13.4 Entire Agreement and Order of Precedence

This Agreement is the entire agreement between You and Us regarding Our provision and Your receipt of Services, and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement will be effective unless, until and only to the extent in writing and signed by the Party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in Your purchase order or in any other of Your order documentation will be incorporated into or form any part of this Agreement, and all such terms or conditions will be void. In the event and only to the extent of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable SOW, (2) any exhibit, schedule or addendum to this Agreement and (3) the body of this Agreement.

13.5 Relationship of the Parties

The Parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Each Party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.

13.6 No Third-Party Beneficiaries

There are no third-party beneficiaries to this Agreement.

13.7 Subcontractors

We may, in Our reasonable discretion, use subcontractors inside or outside the United States to perform any of its obligations hereunder. Aerohive Networks Inc will be responsible for the performance of Services by its personnel (including employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.

13.8 Waiver

No failure or delay by either Party in exercising any right under this Agreement will constitute a waiver of that right.

13.9 Severability

If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

13.10 Assignment

Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other Party's prior written consent (not to be unreasonably withheld), provided however, either Party may assign this Agreement in its entirety (including all SOWs, as applicable), without the other Party's consent, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Notwithstanding the foregoing, if a Party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other Party, then such other Party may terminate this Agreement upon written notice. A Party's sole remedy for any purported assignment by the other Party in breach of this paragraph will be, at the non-assigning Party's election, termination of this Agreement upon written notice to the assigning Party. Subject to the foregoing, this Agreement will bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

13. GENERAL PROVISIONS (CONTINUED)

13.11 Use of Your or Third-Party Data

We acknowledge and agree that with respect to data We receive or have access to, collect, retain, use, process or transfer on your behalf and including by means of Services, We are acting as the processor of such information and You, as the controller of such information, have the sole and exclusive authority to determine the purposes and means of its use, retention or transfer of such information, including which Services You receive. Such information may include personal information of third parties using the Services, including personal data of a third-party end user.

In this regard, and with this understanding of the respective roles and processor (Us) and controller (You), each Party will comply with and will only use personal data as permitted by all laws and regulations applicable to the data in question, including without limitation, the EU General Data Protection Regulation 2016/679 ("GDPR") where it applies to the "processing" of "personal data" (as those terms are defined by the GDPR) hereunder. As a controller of the personal data, You have the sole and exclusive responsibility for complying with any and all applicable data protection laws and regulations relating to Your collection, retention, use, processing or transfer of personal data, whether of Your or Your employees or of a third-party end user of the Services. This includes data processing in relation to the Services which You or a third-party end user may request.

13.12 Force Majeure

Other than the payment of moneys, non-performance of either Party shall be excused to the extent that performance is rendered commercially unreasonable by acts of God, war, fire, flood, riot, power failure, embargo, material shortages, strikes, governmental acts, man-made or natural disasters, earthquakes, failure or limitation of supply or any other reason where failure to perform is beyond the reasonable control and not caused by the negligence of the non-performing Party, and provided that such Party notifies in writing the other Party of the existence of such situation.

13.13 Choice of Law; Venue; Jurisdiction

This Agreement shall be governed by, and interpretation and enforcement of any dispute arising under this Agreement shall be subject to, the laws of the State of California, without regard to its principles of conflicts of laws. The rights and obligations of the parties under this Agreement shall not be governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods. The Parties accept and submit to the state and federal courts located in Santa Clara County, California, as proper, sole and exclusive jurisdiction and venue over any dispute arising hereunder.

13.14 Arbitration

Any dispute or claim arising out of or in connection with this Agreement, or the performance, breach or termination thereof, shall be finally settled by binding arbitration, which arbitration ruling shall not be subject to appeal. The arbitration will be conducted in Santa Clara, California and be administered by the American Arbitration Association in accordance with its Arbitration Rules for Commercial Disputes then in-effect.

Judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof, which award upon entry shall be final and not appealable. Notwithstanding the foregoing, either party may apply to any court of competent jurisdiction for injunctive relief, including to prevent disclosure of Confidential Information, or to enforce a judgment or other decision, without breach of this arbitration provision. Each party will bear its own costs and fees incurred in the arbitration, but will share equally the costs and fees of the arbitrator.

13.15 Attorney's Fees

In the event of any dispute between the Parties, whether resolved by arbitration, or judicial, administrative or other proceeding, the prevailing party in any action, arbitration or proceeding based upon the dispute shall not be entitled to recover its attorneys' fees and costs associated with such action (whether such fees or costs are determined to be reasonable or reasonably related to such party's recovery), and in the event of arbitration or other non-judicial proceeding, the arbitrator or presiding officer shall be without authority or jurisdiction to award either Party such fees or expenses.

14. CONTACT

Please contact your Aerohive sales representative should you have any questions or need assistance with orders and availability. Please visit Support at <http://www.aerohive.com/support/end-of-life-products> for additional documentation and support.

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