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5. WARRANTY AND DISCLAIMER

- A. **Software Warranty.** Aerohive warrants that the Software will perform in accordance with published documentation for a period of three (3) months from the earlier to occur of: (i) ninety (90) days after Aerohive ships the Aerohive Product, or (ii) the first date on which you submit a warranty support request to Aerohive technical support.
- B. **Warranty Limitations.** Aerohive will have no obligation with respect to warranty issues caused by or resulting from any of the following: (a) installation or use of non-Aerohive software on or in the Aerohive Product; (b) modifications or repairs to the Aerohive Product made by you or any third party without Aerohive’s express written authorization; (c) damage or defects caused by accident, neglect, misuse, abuse, failure of electric power, adverse environmental conditions, unusual electrical or physical stress, catastrophe, negligence, improper storage, testing or connection, or other improper treatment; (d) your use or operation of the Aerohive Product other than as recommended by Aerohive and/or as provided in the product documentation; (e) misconfiguration of the Aerohive Product; (f) any other causes beyond Aerohive’s reasonable control or your or a third party’s acts or omissions; (g) use of the product in a way that is inconsistent with the regulations of the jurisdiction or inconsistent with the regulatory equipment authorizations and approvals specified in the Aerohive product documentation; (h) use of the product without securing required service authorizations and/or operating permits or approvals that

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You may purchase support and maintenance, including new releases, enhancements or updates of the Software, in accordance with Aerohive's then-current standard support and maintenance terms and conditions, as posted on Aerohive's website at www.aerohive.com/support. These terms and conditions may change from time to time and Aerohive will post any such changes on its website.

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A. IN NO EVENT WILL AEROHIVE, ITS SUPPLIERS, AGENTS OR REPRESENTATIVES BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCTS LIABILITY OR ANY OTHER THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION, LOST PROFITS, COSTS OF

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B. IN NO EVENT WILL AEROHIVE'S TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT, THE AEROHIVE PRODUCTS, THE SOFTWARE, OR THE HARDWARE, FROM ALL CAUSES OF ACTION OF ANY KIND, INCLUDING BUT NOT LIMITED TO TORT, CONTRACT, NEGLIGENCE, STRICT LIABILITY AND BREACH OF WARRANTY, EXCEED THE TOTAL AMOUNT YOU PAID FOR THE AEROHIVE PRODUCT.

C. The foregoing shall apply notwithstanding any failure or inability to provide the limited remedies set forth in this Agreement.

8. TERM

A. Term and Termination. This Agreement is effective until terminated. You may terminate this Agreement at any time by destroying all copies of the Software and related documentation. This Agreement will terminate automatically if you fail to comply with any term or condition of this Agreement, including any attempt to transfer a copy of the Software to another party except as provided in this Agreement.

B. Effect of Termination. You agree that upon such termination, you will destroy all copies of the Software and related documentation and immediately return to Aerohive or destroy any and all Proprietary Information in your possession that is in tangible form.

9. U.S. GOVERNMENT RESTRICTED RIGHTS

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10. PARTICIPATION IN THE AEROHIVE PRODUCT IMPROVEMENT PROGRAM

By agreeing to participate in the Aerohive product improvement program, you agree that HiveManager will collect data relating to application usage so that Aerohive can analyze this data, including as part of its development of application plug-in signatures. We might share this collected application usage data with third parties whom we have retained to help in this analysis and development process. In so doing, HiveManager removes all information identifying particular client devices, IP addresses, users, and networks from the aggregated data that we analyze and any reports that we receive. We do not share End User-specific data with third parties at any time for commercial purposes.

Should you wish not to allow us to collect and analyze your data in this manner, you can opt out of this program at any time by clearing the **Participate in the Aerohive Product Improvement Program** check box in the *Update Aerohive Product Improvement Settings* section on the *HiveManager Settings* page.

11. GENERAL

You may not assign this Agreement or any of your rights or duties, by operation of law or otherwise, without Aerohive's prior written consent. Any attempt to assign the Agreement without such consent

will be void. This Agreement will be governed by and construed under the laws of the State of California, excluding its conflicts of law principals. Any action filed by either party arising or relating to this Agreement shall be brought in San Francisco, California, and you irrevocably consent to and waive any objection to jurisdiction and venue in the state and federal courts located in San Francisco, California. The United Nations Convention on the International Sale of Goods shall not govern this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect. No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by you and a duly authorized representative of Aerohive. No failure or delay by either party in exercising any right, power, or remedy under this Agreement, except as specifically provided herein, shall operate as a waiver of any such right, power or remedy. You agree to comply fully with all applicable laws, rules, policies, directives and regulations, including the U.S. export laws and to provide Aerohive with such documentation, assurances and access to records as may be required to obtain licenses under the U.S. export laws. You agree that you will not knowingly, without prior

authorization if required, export or re-export the Software in any medium without the appropriate United States and foreign government licenses. The parties to this Agreement are independent contractors and as such will not have any authority to bind or commit the other. Nothing in this Agreement will in any way be construed to create a joint venture, partnership or agency relationship between the parties for any purpose. Aerohive's failure to perform its obligations hereunder shall be excused to the extent and for the period such performance is prevented by any condition or act beyond the reasonable control of Aerohive, including without limitation fire, flood, earthquake, acts of God, explosion, casualty of war, labor dispute, inability to obtain delivery of parts, failure of supplies of electrical power, violence, any governmental law, order, regulation or ordinance. If this Agreement expires or is terminated, the provisions of Sections 2 (Restrictions on Use and Transfer), 3 (Ownership), 4 (Confidential Information), 5B (Warranty Limitations), 5C (Warranty Disclaimer), 7 (Limitation of Liability), 8B (Effect of Termination), 9 (U.S. Government Restricted Rights) and 10 (General) shall survive and shall continue to bind the parties. If you have any questions about the terms of this Agreement, please contact Aerohive at support@aerohive.com.