

## **DATA PROCESSING ADDENDUM**

This Data Processing Addendum (“**DPA**”) forms part of the End User License and Services Agreement (the “**Agreement**”) between Customer and Ivanti, to reflect the parties’ agreement about Privacy Data as defined below. References to the Agreement will be construed as including without limitation this DPA. Any capitalized terms not defined herein shall have the respective meanings given to them in the Agreement.

### **Definitions.**

**Privacy Data.** “Privacy Data” means any information relating to an identified or identifiable natural person.

**Processing Data.** “Process” or Processing” means any operation or set of operations performed upon Privacy Data or sets of Privacy Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

**Use of Privacy Data.** Ivanti, Ivanti Affiliates and third parties operating on behalf of Ivanti will collect, access, store, use or otherwise Process Privacy Data of you, your employees, your customers and Users of the Software and/or connected services (including names, phone numbers and email addresses) to administrate the contractual relationship and to provide the Software and/or connected services (e.g. Professional Services, SAAS, Support and Maintenance Services).

**Notices, Consents and Other Authorizations or Permissions.** You are solely responsible for the assessment of the legitimacy of the collection, access, storage, use or other Processing of all Privacy Data under the Agreement. You are also solely responsible for obtaining, and demonstrating evidence that you have obtained, all necessary consents, authorizations and required permissions under any Applicable Laws, regulation or contractual agreement in a valid manner for Ivanti to provide the Software and perform the services hereunder. Upon request of Ivanti, you shall provide adequate proof for having properly obtained all such necessary consents, authorizations and required permissions. If you cannot comply with this obligation, you agree to provide all necessary technical and organizational means to rule out the possibility of Ivanti having access to, using or otherwise processing Privacy Data in the course of performing under the Agreement.

**Privacy Data Subject to EU Data Directive and GDPR.** If any Privacy Data is from an individual located in the European Economic Area, then, other than as necessary for administrating the contractual relationship, the parties agree that the terms and conditions set forth in Attachment 1 to this Data Processing Addendum shall apply and are hereby incorporated by reference. If any individual affected by this DPA is subject to German data protection law before May 25, 2018 the parties agree that the following applies:

- Prior to sharing or providing access to any Privacy Data with Ivanti, you will sign this DPA by manual signature and mail the original signed document to Ivanti at the address set forth in Contact Information section of the Agreement. Ivanti will sign the original and send you a copy. You agree to indemnify Ivanti for any damages if you share Privacy Data with Ivanti, Ivanti Affiliates or third parties acting on behalf of Ivanti prior to your receipt of the fully executed DPA, except for the exchange of Privacy Data necessary to administer the contractual relationship.

**If you are subject to the German Data Protection law prior to May 25, 2018, then please sign below.** Otherwise, your acceptance of the Agreement shall act as acceptance of this DPA and your signature below is not required.

The Parties have caused their duly authorized representatives to execute this DPA as of the dates set forth below.

**CUSTOMER:** \_\_\_\_\_

**IVANTI**

**By (Signature):** \_\_\_\_\_

**By (Signature):** \_\_\_\_\_

**Name (Printed):** \_\_\_\_\_

**Name (Printed):** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## ATTACHMENT 1 TO THE DATA PROCESSING ADDENDUM

### **(Applicable Only To Personal Data Subject to the EU Data Directive and GDPR)**

This Attachment 1 to the Data Processing Addendum (“**DPA**”) forms part of the End User License and Services Agreement (the “**Agreement**”) between Customer and Ivanti, to reflect the parties’ agreement about the Processing of Personal Data, when applicable, in accordance with the requirements of Data Protection Laws and Regulations. References to the Agreement will be construed as including without limitation this DPA. Any capitalized terms not defined herein shall have the respective meanings given to them in the Agreement.

#### **1. Definitions.**

a. “**Data Protection Laws and Regulations**” means all laws and regulations, including laws and regulations of the European Union, the European Economic Area and their member states, Switzerland and the United Kingdom, applicable to the Processing of Personal Data under the Agreement, including the EU Directive 95/46/EC (the “**Directive**”) and, when effective, the General Data Protection Regulation (“**GDPR**”) (Regulation (EU) 2016/679).

b. “**Data Subject**” means an individual who is the subject of Personal Data.

c. “**Personal Data**” means any information provided or made available by or on behalf of Customer to Ivanti and relating to an identified or identifiable natural person that resides in the European Economic Area or Switzerland; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier including without limitation a name or other identifier.

#### **2. Processing of Personal Data.**

a. **Roles of the Parties.** The parties agree that Customer is the controller solely responsible for determining the purposes and means of the processing of Personal Data, and Ivanti is Customer’s processor responsible for Processing Personal Data on behalf of the Controller. Ivanti shall only take action pursuant to instructions of Customer with regards to Processing Personal Data and transferring Personal Data to the United States. Ivanti may engage sub-processors to Process Personal Data pursuant to the requirements set forth in Section 3 “Sub-Processors” below.

b. **Customer’s Processing of Personal Data.** Customer is responsible for its compliance with the Data Protection Laws and Regulations, including without limitation the lawfulness of any transfer of Personal Data to Ivanti and the instructions given to Ivanti concerning Ivanti’s Processing of Personal Data. For the avoidance of doubt, but not by way of limitation, Customer’s instructions for the Processing of Personal Data must comply with Data Protection Laws and Regulations. Customer shall have sole responsibility for the accuracy, quality, and legality of Personal Data and the means by which Customer acquired Personal Data, including providing any required notices to, and obtaining any necessary consent from Data Subjects. Customer takes full responsibility

to keep the amount of Personal Data provided to Ivanti to the minimum necessary for the performance of the Services. Customer shall be solely responsible for establishing and maintaining any data processing registers or overview as required by any applicable law, including without limitation the Data Protection Laws and Regulations.

Customer acknowledges and consents that certain business operations necessary for the fulfillment of Ivanti's services hereunder may have been transferred or will be transferred in the future to one or more dedicated Ivanti Affiliates independently managing the provision of such services, including for example Ivanti Inc., Ivanti Germany GmbH, Ivanti UK Limited, Heat Software Ireland, RES Software BV, Ivanti Software Poland sp.zo.o., Ivanti Software K.K., Ivanti Beijing Information Technology Co., Ltd.

c. **Controller's Right to Issue Instructions.** Ivanti shall only Process Personal Data in accordance with Customer's instructions. Customer's initial instructions for the Processing of Personal Data are defined by the Agreement, Schedule 1 to this DPA, and any applicable order form or Statement of Work regarding the Software and Services. Subject to the terms of this DPA and with mutual agreement of the parties, Customer may issue additional written instructions concerning the type, extent and procedure of Processing. Any changes of the subject matter of Processing and of procedures shall be agreed upon by the parties in writing prior to becoming effective. Customer is responsible for ensuring that all individuals who provide written instructions to Ivanti are authorized by Customer to issue instructions to Ivanti. Ivanti will inform Customer of any instruction that it deems to be in violation of Data Protection Laws and Regulations, and Ivanti will not execute such instructions until the instruction has been confirmed or modified by Customer.

d. **Details of Processing.** The initial nature and purpose of the Processing, duration of the Processing, categories of Data Subjects, and types of Personal Data are set forth on Schedule 1.

e. **Data Breach.** Ivanti shall investigate potential Data Breaches, and Ivanti shall notify Customer without undue delay after becoming aware of a Data Breach.

f. **Return or Deletion of Customer Personal Data.** Unless otherwise required by applicable Data Protection Laws and Regulations, Ivanti will destroy or return to Customer its Personal Data upon termination or expiration of the relevant provisions of the Agreement.

### 3. **Sub-Processors.**

a. **Use of Sub-processors.** Customer agrees that Ivanti may engage sub-processors to Process Personal Data in accordance with the DPA. A list of sub-processors including their addresses is available upon request. When engaging sub-processors, Ivanti shall enter into agreements with the sub-processors to bind them to obligations which are substantially similar or more stringent than those set out in this DPA.

To the extent required, Customer explicitly mandates Ivanti to sign such agreements directly with the sub-processors. Customer will not directly communicate with Ivanti's sub-processors about the Software or Services, unless agreed to by Ivanti in Ivanti's sole discretion.

b. **Ivanti Sub-processors Added After Effective Date.** Ivanti will notify Customer in advance of any changes to sub-processors using regular communication means such as email, websites, and portals. If Customer reasonably objects to the addition of a new sub-processors (e.g., such change causes Customer to be non-compliant with applicable with Data Protection Laws and Regulations), Customer shall notify Ivanti in writing of its specific objections within thirty (30) days of receiving such notification. If Customer does not object within such period, the addition of the new sub-processor and, if applicable, the accession to this DPA shall be considered accepted. If Customer does object to the addition of a new sub-processor and Ivanti cannot accommodate Customer's objection, Customer may terminate the Services and Software in writing within sixty (60) days of receiving Ivanti's notification.

4. **Representations and Warranties.** Customer represents, warrants, and covenants the following:

a. The Personal Data has been collected and transferred to Ivanti in accordance with the Data Protection Laws and Regulations.

b. Prior to its transfer to Ivanti, the Personal Data has been maintained, retained, secured and protected in accordance with the Data Protection Laws and Regulations.

c. Customer will respond to inquiries from Data Subjects and from applicable regulatory authorities concerning the Processing of the Personal Data, and will alert Ivanti of any inquiries from Data Subjects or from applicable regulatory authorities that relate to Ivanti's Processing of the Personal Data.

d. Prior to the collection of Personal Data, the Customer has obtained adequate consent from a Data Subject for Ivanti's Processing of Personal Data in accordance with this DPA, including Processing of Personal Data.

e. Customer will make available a copy of this Agreement to any Data Subject or regulatory authorities as required by the Data Protection Laws and Regulations or upon the reasonable request of a Data Subject or a regulatory authority.

f. Customer shall be solely responsible and liable for its compliance with the Data Protection Laws and Regulations.

5. **Rights of Data Subjects.** Ivanti shall, to the extent legally permitted, promptly notify Customer if it receives a request from a Data Subject for access to, correction, amendment or deletion of such Data Subject's Personal Data and, to the extent applicable, Ivanti shall provide Customer with commercially reasonable cooperation and assistance in relation to any such complaint, notice, or communication. Ivanti shall correct

erroneous Personal Data as directed by Customer in writing or pursuant to a process mutually agreed to in writing by the parties. Customer shall use its best efforts to respond to and resolve promptly all requests from Data Subjects which Ivanti provides to Customer. If Data Protection Laws and Regulations require Ivanti to take any corrective actions without the involvement of Customer, Ivanti shall take such corrective actions and inform Customer. Customer shall be responsible for any reasonable costs arising from Ivanti's provision of such assistance under this Section. To the extent legally permitted, Customer shall be responsible for any costs arising from Ivanti's provision of such assistance.

## 6. **Ivanti Personnel.**

a. **Confidentiality.** Ivanti shall train personnel engaged in the Processing of Personal Data of the confidential nature of the Personal Data and provide appropriate training based on their responsibilities. Ivanti shall execute written agreements with its personnel to maintain the confidentiality of Personal Data, including post the termination of the personnel engagement.

b. **Limitation of Access.** Ivanti shall use commercially reasonable efforts to limit access to Personal Data to personnel who require such access to perform the Agreement.

c. **Data Protection Officer.** If required by Data Protection Laws and Regulations, Ivanti shall appoint a data protection officer. Upon request, Ivanti will provide the contact details of the appointed person.

7. **Security.** Ivanti will implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk posed by the Processing of Personal Data, taking into account the costs of implementation; the nature, scope, context, and purposes of the Processing; and the risk of varying likelihood and severity of harm to the data subjects. In assessing the appropriate level of security, Ivanti shall weigh the risks presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to personal data transmitted, stored or otherwise Processed.

## 8. **Audit Rights.**

a. **Audit Requests.** Subject to Section 8(c), upon Customer's written request, Ivanti will provide Customer with the most recent summary audit report(s) concerning the compliance and undertakings in this Agreement. Ivanti's policy is to share methodology, and executive summary information, not raw data or private information. Ivanti will reasonably cooperate with Customer by providing available additional information to help Customer better understand such compliance and undertakings. To the extent it is not possible to otherwise satisfy an audit obligation mandated by applicable Data Protection Laws and Regulations and subject to Section 8(c), only the legally mandated entity (such as a governmental regulatory agency having oversight of Customer's operations) or legally mandated functions within Customer (such as the internal controls function) may

conduct an onsite visit of the facilities used to provide the Services. Unless mandated by Data Protection Laws and Regulations, no audits are allowed within a data center for security and compliance reasons. After conducting an audit under this Section 8 or after receiving an Ivanti report under this Section 8, Customer must notify Ivanti of the specific manner, if any, in which Ivanti does not comply with any of the security, confidentiality, or data protection obligations in this DPA, if applicable. Any such information will be deemed Confidential Information of Ivanti.

b. **Sub-Processors.** Customer may not audit Ivanti's sub-processors without Ivanti's and Ivanti's sub-processor's prior agreement. Customer agrees its requests to audit sub-processors may be satisfied by Ivanti or Ivanti's sub-processors presenting up-to-date attestations, reports or extracts from independent bodies, including without limitation external or internal auditors, Ivanti's data protection officer, the IT security department, data protection or quality auditors or other mutually agreed to third parties) or certification by way of an IT security or data protection audit. Onsite audits at sub-processors premises may be performed by Ivanti acting on behalf of Controller.

c. **Audit Process.** Unless required by Data Protection Laws and Regulations, Customer may request a summary audit report(s) or audit Ivanti no more than once annually. Customer must provide at least six (6) weeks' prior written notice to Ivanti of a request for summary audit report(s) or request to audit. The scope of any audit will be limited to Ivanti's policies, procedures and controls relevant to the protection of Customer's Personal Data and defined in Schedule 1. Subject to Section 8(b), all audits will be conducted during normal business hours, at Ivanti's principal place of business or other Ivanti location(s) where Personal Data is accessed, processed or administered, and will not unreasonably interfere with Ivanti's day-to-day operations. An audit will be conducted at Customer's sole cost and by a mutually agreed upon third party who is engaged and paid by Customer, and is under a non-disclosure agreement containing confidentiality provisions substantially similar to those set forth in the Agreement, obligating it to maintain the confidentiality of all Ivanti Confidential Information and all audit findings. Before the commencement of any such on-site audit, Ivanti and Customer shall mutually agree upon the timing, scope, and duration of the audit. Ivanti will reasonably cooperate with the audit, including providing auditor the right to review but not to copy Ivanti security information or materials during normal business hours. Customer shall, at no charge, provide to Ivanti a full copy of all findings of the audit.

9. **EU-U.S. and SWISS-U.S. Privacy Shield.** Either Ivanti or its affiliates who provide Software or Services under the Agreement, self-certify to and comply with the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks, as administered by the US Department of Commerce, and Ivanti shall maintain its self-certifications to and compliance with the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks, or its equivalent, for the term of the Agreement with respect to the Processing of Personal Data that is transferred from the European Economic Area and/or Switzerland to the United States.

10. **Limitation of Liability.** Each party's and all of its affiliates' liability, taken together in the aggregate, arising out of or related to this DPA whether in contract, tort or under any other theory of liability, is subject to the "Limitation of Liability" section of the

Agreement, and any reference in such section to the liability of a party means the aggregate liability of that party and all of its affiliates under the Agreement and this DPA. For the avoidance of doubt, Ivanti's and its affiliates' total liability for all claims from the Customer arising out of or related to the Agreement and each DPA shall apply in the aggregate for all claims under both the Agreement and this DPA.

**11. Governing Law.** The parties agree that (1) governing law of this DPA, and (2) the forum for all disputes in respect of this DPA, shall be the same as set out in the Agreement, unless otherwise required by applicable Data Protection Laws and Regulations.



## **Schedule 1 to Attachment 1**

### **Processing Details**

#### **Nature and Purpose of Processing**

Provision of IT services: Software licensing and implementation, whether on-premises or as a SaaS solution, regarding the administration and facilitation of essential business processes in the field of

- Unified Endpoint Management
- IT service management (ITSM);
- IT asset management (ITAM);
- Security;
- Reporting and Analytics; and,
- Supply Chain

IT services include:

- The use of software as an on-premise installation or SaaS-based solution including installation of modules (including without limitation, incident, change, asset, configuration and release management modules);
- Self-service and service catalogues;
- Support and maintenance including without limitation remote-access; and
- Patches, app control, endpoint/mobile security and privilege management.

Additional details are set forth in the Documentation provided with the Software, subject to Agreement and any schedules or statements of work related thereto, or as further instructed by Customer for use of the Software and services.

#### **Duration of Processing**

Ivanti will Process Personal Data for the duration of the Agreement, unless otherwise agreed upon in writing. Ivanti will retain Personal Data as set forth in the Agreement and Ivanti's Data Retention and Destruction Policy.

#### **Categories of Data Subjects**

Customer may submit Personal Data to the Services, the extent of which is determined

and controlled by Customer in its sole discretion, and which may include, but is not limited to Personal Data relating to the following categories of Data Subjects:

- Customers
- Prospects
- Employees
- Suppliers
- Commercial representatives
- Contacts
- Contractors (including contingent workers)
- Volunteer, temporary and casual workers
- Freelancers, agents, consultants and other professional respondents, and their respective dependents, beneficiaries and emergency contacts
- Perspective employees and temporary staff of customers
- Complainants, correspondents and enquirers
- Advisers, consultants and other professional experts.
- Employees or contact persons of Customer's prospects, customers, business partners and vendors
- Business partners and vendors of Customer (who are natural persons)
- Customer's Users authorized by Customer to use the Software and related services

### **Type of Personal Data**

Customer may submit Personal Data to the Software, Services, Ivanti websites and mobile applications, the extent of which is determined and controlled by Customer in its sole discretion, and which may include, but is not limited to the following categories of Personal Data:

- Application Use Data (e.g. log-files)
- Identification data and employee master data (which may include title, name, address, telephone number, fax number, company address, email address)

- Cookies and session information
- Goods and services provided – products purchased, products shipped or downloaded, payments processed
- Internet protocol (IP) address and other computer identifiers.
- Contact details (e.g. telephone, e-mail)
- Contract master data and customer history (e.g. contractual relationship, interest in products or contracts)
- Billing and payment data
- Planning and management data
- User-provided content
- Other, as described in the Documentation or Agreement.