

Ivanti Software Evaluation License Agreement

This Ivanti Software Evaluation License Agreement (this "**Agreement**"), effective as of the date of last signature below (the "**Effective Date**"), is entered into by and between the Ivanti entity indicated below (hereinafter, "**Ivanti**") and the individual or entity for which an assessment or trial is conducted ("**Company**").

As used herein, "Ivanti" or "Ivanti" means the entity indicated below:

- Ivanti, Inc., a Delaware corporation, if Company is domiciled in North or South America, except Brazil.
- Ivanti Comércio de Software Brasil Ltda, a Brazilian company, if Company is domiciled in Brazil.
- Ivanti Software K.K., a Japanese company, if Company is domiciled in Japan.
- Ivanti Software Technology (Beijing) Co., Ltd., a Chinese company, if Company is domiciled in China.
- Ivanti UK Limited, a limited company registered in England and Wales, if Company is domiciled in any other location not mentioned above.

Purpose: Company desires to obtain a license to certain Ivanti software (the "**Evaluation Software**") described in a statement of work entered into by and between Ivanti and Company (the "**Statement of Work**" or "**SOW**") solely for Company's internal evaluation purposes during the time period set forth in the SOW, subject to the terms and conditions of this Agreement and Ivanti's End User License and Services Agreement located at <https://www.ivanti.com/company/legal/eula> ("**EULSA**").

In the event of any conflict or inconsistency among the provisions of this Agreement, the EULSA, and the Statement of Work (excluding Appendix B of the SOW), such conflict or inconsistency shall be resolved by observing the following order of precedence:

- (a) this Agreement;
- (b) the EULSA; and
- (c) the Statement of Work (excluding Appendix B of the SOW).

Now, therefore, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. License Grant. Subject to the terms and conditions of this Agreement, Ivanti hereby grants Company a non-exclusive, non-sublicensable, and non-transferable license during the time period set forth in the SOW ("**Evaluation Period**") to: (a) use the Evaluation Software solely for Company's internal evaluation purposes up to the number of employees or contractors of Company who are permitted to access and use the Evaluation Software as may be set forth in the SOW ("**Authorized Users**"); and (b) use the Ivanti's end user documentation relating to the Evaluation Software (the "**Documentation**") solely for Company's internal evaluation purposes in connection with Company's use of the Evaluation Software. Company will not use the Evaluation Software

for any purpose other than evaluating and testing such Evaluation Software internally in connection with assessing whether Company desires to enter into a commercial license agreement with Ivanti for the Evaluation Software. This Agreement does not provide a commercial license and Company's use of the Evaluation Software after the Evaluation Period is subject to the parties' entering into and executing a separate commercial license agreement.

2. Use Restrictions. Company shall not use the Evaluation Software or Documentation for any purposes beyond the scope of the license granted in this Agreement. Without limiting the foregoing and except as otherwise expressly set forth in this Agreement, Company shall not at any time, directly or indirectly: (a) copy, modify, or create derivative works of the Evaluation Software or the Documentation, in whole or in part; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Evaluation Software or the Documentation; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the Evaluation Software, in whole or in part; (d) remove any proprietary notices from the Evaluation Software or the Documentation; or (e) use the Evaluation Software in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law.

3. Reservation of Rights. Ivanti reserves all rights not expressly granted to Company in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Company or any third party any intellectual property rights or other right, title, or interest in or to the Evaluation Software.

4. Delivery. If the Evaluation Software is on-premise Evaluation Software, Ivanti shall deliver the Evaluation Software to Company electronically or by other means, in Ivanti's sole discretion. If the Evaluation Software is a SaaS Offering, then Ivanti shall establish a trial tenant for customers use after execution of this Agreement.

5. Company Responsibilities. Company is responsible and liable for all uses of the Evaluation Software and Documentation resulting from access provided by Company, directly or indirectly, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Company is responsible for all acts and omissions of Authorized Users, and any act or omission by an Authorized User that would constitute a breach of this Agreement if taken by Company will be deemed a breach of this Agreement by Company. Company shall take reasonable efforts to make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Evaluation Software and shall cause Authorized Users to comply with such provisions.

6. Support. Ivanti has no obligation under this Agreement to provide support, maintenance, upgrades, modifications, or new releases of the Evaluation Software or Documentation to Company. However, Ivanti agrees to use its commercially reasonable efforts to correct errors in the Evaluation Software and Documentation within a reasonable time and shall provide Company with any corrections it makes generally available to other evaluation participants.

7. Evaluation Fee. The parties agree that no license fees or other fees will be payable under this Agreement in exchange for the licenses granted under this Agreement. Company acknowledges and agrees that this fee arrangement is made in consideration of the mutual covenants set forth in this Agreement, including, without limitation, the disclaimers, exclusions, and limitations of liability set forth herein.

8. Confidential Information. From time to time during the Evaluation Period, either party may disclose or make available to the other party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, and whether or not marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving party at the time of disclosure; (c) rightfully obtained by the receiving party on a non-confidential basis from a third party; or (d) independently developed by the receiving party. The receiving party shall not disclose the disclosing party's Confidential Information to any person or entity, except to the receiving party's employees who have a need to know the Confidential Information for the receiving party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order shall first have given written notice to the other party and made a reasonable effort to obtain a protective order; or (ii) to establish a party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving party shall promptly return to the disclosing party all copies, whether in written, electronic, or other form or media, of the disclosing party's Confidential Information, or destroy all such copies and certify in writing to the disclosing party that such Confidential Information has been destroyed. Each party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

9. Intellectual Property Ownership; Feedback.

(a) Company acknowledges that, as between Company and Ivanti, Ivanti owns all right, title, and interest, including all intellectual property rights, in and to the Evaluation Software and Documentation.

(b) If Company or any of its employees or contractors submits, orally or in writing, suggestions or recommended changes to the Evaluation Software or Documentation, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Ivanti is free to use such Feedback irrespective of any other obligation or limitation between the parties governing such Feedback. Company hereby assigns to Ivanti on Company's behalf, and on behalf of its employees, contractors and/or agents, all right, title, and interest in, and Ivanti

is free to use, without any attribution or compensation to any party, any ideas, know-how, concepts, techniques, or other intellectual property rights contained in the Feedback, for any purpose whatsoever, although Ivanti is not required to use any Feedback.

10. Disclaimer of Warranties. IVANTI PROVIDES AND COMPANY ACCEPTS THE EVALUATION SOFTWARE AND DOCUMENTATION "AS IS" AND IVANTI HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. IVANTI SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. IVANTI MAKES NO WARRANTY OF ANY KIND THAT THE EVALUATION SOFTWARE AND DOCUMENTATION, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET COMPANY'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE.

11. Indemnification. Company agrees to indemnify, defend, and hold harmless Ivanti and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, or costs (including reasonable attorneys' fees) resulting from any third-party claim, suit, action, or proceeding based on Company's or Company's Authorized Users' (a) negligence or willful misconduct or (b) use of the Evaluation Software or Documentation in a manner not authorized or contemplated by this Agreement. In the event Ivanti seeks indemnification or defense from Company under this provision, Ivanti shall promptly notify Company in writing of the claim(s) brought against Ivanti for which Ivanti seeks indemnification or defense; provided, however, that failure to give notice shall not relieve Company of its obligations except to the extent that Company is prejudiced by such failure. Ivanti reserves the right, at its option and in its sole discretion, to assume full control of the defense of claims with legal counsel of Ivanti's choice. Company may not enter into any third-party agreement, which would, in any manner whatsoever, affect Ivanti's rights, constitute an admission of fault by Ivanti or bind Ivanti in any manner, without Ivanti's prior written consent.

12. Limitations of Liability. IN NO EVENT WILL IVANTI BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (A) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (B) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (C) LOSS OF GOODWILL OR REPUTATION; (D) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (E) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER IVANTI WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL IVANTI'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL

OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED \$1,000 USD.

13. Term and Termination. This Agreement is effective as of the Effective Date and, unless terminated earlier pursuant to this Section 13, will continue in effect until the expiration of the Evaluation Period. Either party may terminate this Agreement at any time, without cause, upon ten (10) days prior written notice. Ivanti may terminate this Agreement on written notice to Company if Company materially breaches or fails to comply with any terms or conditions of this Agreement and does not cure such breach or failure within five (5) days after receiving written notice thereof. Upon expiration or earlier termination of this Agreement, the license granted hereunder will also terminate and Company shall cease using and delete, destroy, or return all copies of the Evaluation Software and Documentation and certify in writing to the Ivanti that the Evaluation Software and Documentation has been deleted or destroyed. This Section 13 and Sections 2, 3, 5, 8, 9, 10, 11, 12, and 14 survive any termination or expiration of this Agreement. Company acknowledges that the Evaluation Software may have a "time-out" mechanism.

14. Miscellaneous.

(a) Entire Agreement. This Agreement, together with **Exhibit A**, constitutes the sole and entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter.

(b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and addressed to the parties at the addresses set forth on the first page of this Agreement (or to such other address that may be designated by the party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile, email (with confirmation of transmission), or certified or registered mail (in each case, return receipt requested, postage pre-paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving party, and (ii) if the party giving the Notice has complied with the requirements of this Section.

(c) Amendment and Modification; Waiver. No amendment to or modification of this Agreement is effective unless it is in writing and signed by an authorized representative of each party. No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

(d) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable

such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(e) Governing Law; Submission to Jurisdiction. If this Agreement is with Ivanti, Inc. or Ivanti Comércio de Software Brasil Ltda, it will be governed by the laws of the State of Utah without regard to conflict of laws principles and in any dispute arising out of or in connection with the Agreement and the parties consent to the exclusive jurisdiction and venue in the State and Federal courts within Salt Lake County, Utah. If this Agreement is with Ivanti UK Limited, it will be governed by the laws of England and Wales without regard to conflict of laws principles and in any dispute arising out of or in connection with this Agreement the parties consent to the exclusive jurisdiction and venue in the courts within London, United Kingdom. If this Agreement is with Ivanti Software K.K., it will be governed by the laws of Japan without regard to conflict of laws principles and in any dispute arising out of or in connection with the Agreement the parties consent to the exclusive jurisdiction and venue in the courts within Tokyo, Japan. If this Agreement is with Ivanti Software Technology (Beijing) Co., Ltd., it will be governed by the laws of China without regard to conflict of laws principles and in any dispute arising out of or in connection with the Agreement the parties consent to the exclusive jurisdiction and venue in the courts within Beijing, China. The United Nations Convention for the International Sale of Goods shall not apply to this Agreement.

(f) Assignment. Company may not assign or transfer any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Ivanti. Any purported assignment, transfer, or delegation in violation of this Section is null and void. No assignment, transfer, or delegation will relieve the assigning or delegating party of any of its obligations hereunder. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

(g) Export Regulation. The Evaluation Software may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. Company shall not, directly or indirectly, export, re-export, or release the Evaluation Software to, or make the Evaluation Software accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Company shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Evaluation Software available outside the US.

(h) US Government Rights. Each of the Documentation and the Evaluation Software is a "commercial item" as that term is defined at 48 C.F.R. § 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. § 12.212. Accordingly, if Company is an agency of the US Government or any contractor therefor, Company only receives those rights with

respect to the Evaluation Software and Documentation as are granted to all other end users under license, in accordance with (a) 48 C.F.R. § 227.7201 through 48 C.F.R. § 227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. § 12.212, with respect to all other US Government Companies and their contractors.

(i) Equitable Relief. Each party acknowledges and agrees that a breach or threatened breach by such party of any of its obligations under Section 9(a) or, in the case of Company, Section 2, would cause the other party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

(j) Counterparts. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement.