

## IVANTI END USER LICENSE AND SERVICES AGREEMENT

IMPORTANT: PLEASE READ THESE TERMS BEFORE ORDERING, INSTALLING, CONFIGURING AND/OR USING THE IVANTI SOFTWARE OR SAAS OFFERINGS. THIS DOCUMENT DESCRIBES THE RELATIONSHIP BETWEEN THE APPLICABLE IVANTI ENTITY AS DETERMINED IN ACCORDANCE WITH THIS DOCUMENT (“IVANTI”) AND YOU (EACH OF IVANTI AND YOU, A “PARTY” AND, COLLECTIVELY, THE “PARTIES”). THIS DOCUMENT ALSO MAKES REFERENCE TO ONE OR MORE ADDITIONAL DOCUMENTS WHICH ARE INCORPORATED INTO THIS DOCUMENT BY REFERENCE (“SUPPLEMENTAL TERMS”) (COLLECTIVELY WITH THIS DOCUMENT, THE “AGREEMENT”). THIS AGREEMENT WILL BECOME EFFECTIVE ON THE DATE YOU ACCEPT THE TERMS OF THIS AGREEMENT (THE “EFFECTIVE DATE”). BY INSTALLING, CONFIGURING, AND/OR USING THE SOFTWARE OR SAAS OFFERING IN ANY WAY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THE ENTITY OR INDIVIDUAL IDENTIFIED AS THE CUSTOMER (“YOU” OR “YOUR”) TO THIS AGREEMENT, AND ARE UNCONDITIONALLY CONSENTING TO BE BOUND BY THE TERMS OF AND BECOME A PARTY TO THIS AGREEMENT WITH IVANTI. IVANTI DOES NOT AGREE TO ANY OTHER TERMS, INCLUDING WITHOUT LIMITATION ANY TERMS ON YOUR PURCHASE ORDERS OR INVOICES. IF YOU HAVE ENTERED INTO A SEPARATE WRITTEN AGREEMENT WITH IVANTI REGARDING THE SOFTWARE OR SAAS OFFERING (“SEPARATE AGREEMENT”), THE TERMS OF SUCH SEPARATE AGREEMENT SHALL CONTINUE IN FULL FORCE AND EFFECT, AND THIS AGREEMENT SHALL NOT APPLY. NOTWITHSTANDING, THIS AGREEMENT WILL REPLACE AND NEGATE ANY SUCH SEPARATE AGREEMENT IN ITS ENTIRETY IF SUCH SEPARATE AGREEMENT IS BETWEEN YOU AND ANY OF THE FOLLOWING ENTITIES:

- FRONTRANGE SOLUTIONS USA INC.;
- FRONTRANGE SOLUTIONS UK LIMITED;
- FRONTRANGE SOLUTIONS ASIA PACIFIC PTY LIMITED;
- HEAT SOFTWARE USA INC.;
- HEAT SOFTWARE UK LIMITED;
- HEAT SOFTWARE ASIA PACIFIC PTY LIMITED; OR
- LUMENSION SECURITY, INC.

All references to “Ivanti” shall mean the entity identified below in the same geographic region as You:

- Ivanti, Inc., a Delaware corporation, in the Americas, except Brazil.
- Ivanti Comércio de Software Brasil Ltda, a Brazilian company, in Brazil.
- Ivanti Software K.K., a Japanese company, in Japan.

- Ivanti Software Technology (Beijing) Co., Ltd., a Chinese company, in China.
- Ivanti International Limited, an Irish company, for Wavelink and Naurtech branded products and services in Europe, the Middle East, Africa, and the Asia Pacific region.
- Ivanti UK Limited, a limited company registered in England and Wales, in all other locations.

1. DEFINITIONS. Certain capitalized terms shall have the meanings set forth below in this Agreement.

- a. “Affiliate” means any legal entity that controls, is controlled by or is under common control with You or Ivanti (as applicable); where ‘control’ refers to ownership of more than fifty percent (50%) of voting securities.
- b. “Analyst” means an individual employed by You or who otherwise provides services (whether as an independent contractor or otherwise) to You, who has login access to manage and use the Software.
- c. “Device” means each electronic device using the Software including without limitation (a) a physical device such as a computer, handheld device, workstation, console, server, or any other electronic device; (b) a virtual machine, such as an operating environment that may be running concurrently with another operating environment on a single physical device; or (c) an electronic or virtual mailbox (e.g., a mailbox for email).
- d. “Documentation” means, collectively, the official product operation instructions, release notes and user manuals provided by Ivanti for the Software, in electronic or written form, that Ivanti has made publicly available.
- e. “Invoice” means the relevant Ivanti or Reseller quotation, order and/or invoice.
- f. “Professional Services” means any of Ivanti’s deployment, consulting, training, and education services to be performed by Ivanti or its subcontractors to the extent identified in a statement of work signed by both Parties referencing this Agreement.
- g. “Reseller” means an Ivanti authorized reseller or distributor.
- h. “SaaS Offering” means Ivanti’s provision of the Software under a Subscription License and as a hosted service under this Agreement.
- i. “Software” means the object code form of the Ivanti proprietary software product(s) made available by Ivanti under this Agreement, whether on premise or as a SaaS Offering, and includes any Documentation, Updates, and Upgrades.
- j. “Support and Maintenance Services” means those technical support and maintenance services for the Software made available by Ivanti under this Agreement.
- k. “Updates” means any updates, minor enhancements, corrections, bug fixes, patches or functions added to or removed from the Software, but shall not include any new software or functionality that Ivanti markets and sells separately.

1. “Upgrades” means major releases of a product that replace a prior version of that product.

m. “User” means an individual employed by or who otherwise provides services (whether as an independent contractor or otherwise) to You who is supported with or uses the Software.

## 2. GRANT OF LICENSE.

a. Software License. Subject to the terms and conditions of this Agreement and in accordance with the applicable Documentation and the License Type, License Model and quantities of licenses purchased and paid for by You, Ivanti hereby grants You (as applicable) (i) a limited right to access and use the SaaS Offering, (ii) a non-exclusive, non-transferable, non-sublicensable license (except as set forth within this Agreement) to use the Software, and (iii) a limited right to maintain one (1) backup, unmodified copy of the Software for archival purposes.

Users shall use and/or access the Software solely on behalf of and for the benefit of You or Your applicable Affiliates and in accordance with the license purchased and the terms of this Agreement. You shall be responsible for all acts and omissions committed by any Users and any actions by such Users that would be a breach of this Agreement, if taken by You, shall be deemed a breach of this Agreement. You agree that Your purchase of the Software is neither contingent upon the delivery of any future functionality or features nor dependent upon any oral or written public comments made by Ivanti with respect to future functionality or features.

Ivanti provides the Software under two (2) general license types (the “License Types”):

- “Perpetual License”. A license to use the Software that is not time-limited when used in accordance with the terms of this Agreement.
- “Subscription License”. A time-limited license to use the Software that expires at the end of a specified period. Software licensed under a Subscription License may contain disabling code to automatically disable itself upon the expiration of the subscription term.

Within the License Types, Ivanti offers the following eight (8) license models (the “License Models”):

- “User-Based”. Under the User-Based model, the Software may be used by a specific User on any number of that User’s Devices. However, You may not transfer a license from one User to another User more than once every thirty (30) days. A license is required for each User.
- “Named User”. Under the Named User model, a Named User is a single User authorized by You to access or use the Software, regardless of whether or not the individual is using the Software. However, You may not transfer a license from one User to another User more than once every thirty (30) days. A license is required for each Named User.
- “Concurrent User”. Under the Concurrent User model, licenses are required for the maximum number of simultaneous Users authorized by You to access or use the Software at any given moment during the previous thirty (30) days (each a “Concurrent User”), regardless of the number of connections used by that individual. A license is required for each Concurrent User.

- “Named Analyst”. Under the Named Analyst model, a Named Analyst is a single Analyst authorized by You, who is assigned a dedicated license to access or use the Software, regardless of whether or not the individual is using the Software. A Named Analyst license cannot be shared across multiple Analysts simultaneously and may not be transferred from one Analyst to another Analyst more than once every thirty (30) days. A license is required for each Named Analyst.
  - “Concurrent Analyst”. Under the Concurrent Analyst model, licenses are required for the maximum number of simultaneous Analysts authorized by You to access or use the Software at any given moment during the previous thirty (30) days (each a “Concurrent Analyst”), regardless of the number of sessions used by that individual. A license is required for each Concurrent Analyst.
  - “Device-Based”. Under the Device-Based model, licenses are required for each Device, whether physical or virtual, on which the Software is deployed. However, You may not transfer a license from one Device to another Device, whether physical or virtual, more than once every thirty (30) days.
  - “Device-Limited”. Under the Device-Limited model, licenses are required for each Device on which the Software is deployed and may only be transferred in the event of accidental destruction to another Device of the same make and model.
  - “Enterprise License Agreement” or “ELA”. Under the Enterprise License Agreement or ELA model, the Software may be used by Your employees, contractors, and agents on any number of each User’s Devices. One (1) license is required for each of Your employees, contractors, and agents, whether or not such employees, contractors, or agents actually use the Software.
- b. The Invoice shall set forth the License Type, License Model, and the means of provisioning of the Software which You are purchasing.
- c. **Evaluation.** If the Software is offered to You for evaluation purposes and provided on a trial use basis then, notwithstanding any contrary provision in this Agreement, You are permitted to use the Software only for internal demonstration, test or evaluation purposes in a non-production environment, and for the period specified on the software license key (if not indicated, this period will be forty-five (45) days from delivery) following which the Software may automatically disable itself. You acknowledge that Ivanti is not obligated to permit further use of the Software past the expiration date. **NOTWITHSTANDING ANY CONTRARY PROVISION IN THIS AGREEMENT THE EVALUATION SOFTWARE IS PROVIDED “AS-IS” WITHOUT SUPPORT OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. SAVE FOR DEATH AND PERSONAL INJURY CAUSED BY IVANTI’S NEGLIGENCE, IVANTI SHALL HAVE NO LIABILITY OF ANY KIND IN ANY CIRCUMSTANCES WHATSOEVER TO YOU IN RESPECT OF ANY EVALUATION SOFTWARE. IN PARTICULAR, IVANTI SHALL HAVE NO LIABILITY IN ANY CIRCUMSTANCES WHATSOEVER FOR ANY DATA LOSS OR CORRUPTION AND YOU AGREE THAT YOU HAVE SOLE RESPONSIBILITY FOR PROTECTING YOUR DATA DURING EVALUATION OF THE SOFTWARE.**

### 3. SAAS OFFERINGS.

- a. **SaaS Offering Supplemental Terms.** If You purchase a SaaS Offering, as identified in the Invoice as a SaaS or cloud offering, then You agree and are subject to the terms and conditions contained in this

Agreement and Ivanti's then-current Supplemental Terms for the SaaS Offering found at <https://www.ivanti.com/company/legal/saas>.

b. Reinstatement Fee. If You purchase a SaaS Offering and at the end of the Initial Term or a Renewal Term choose to change any portion of a SaaS Offering to an on-premise Perpetual License, then Ivanti may assess You with a one (1) time reinstatement fee equal to ten percent (10%) of the cost assessed to You for the SaaS Offering in the Invoice.

4. ENTERPRISE LICENSE AGREEMENT. The ELA model enables customers to purchase various bundles of Software products for enterprise-wide use under a Subscription License (each an "ELA Offering"). Additional details regarding the Software products, analyst license ratios, and server license ratios that are included in each ELA Offering are set forth in the ELA program guide found at <https://rs.ivanti.com/legal/ela-program-guide.pdf>. If You purchase an ELA Offering, as specified in the Invoice, then You agree that the following terms shall apply to any such purchase:

a. User Count. You agree and represent that, at the time of purchase, the quantity of licenses in the Invoice is greater than or equal to the total number of Your employees, contractors, and agents (the "User Count"). Your Affiliate or Affiliates may use the Software You purchase under the ELA only if You have included the total number of such Affiliate's or Affiliates' employees, contractors, and agents in the User Count.

b. True Forward. You shall provide Ivanti with an updated User Count at least thirty (30) days but not more than ninety (90) days prior to each annual period during the term of the Agreement. Any increase in User Count will be added as additional licenses and You will be invoiced accordingly for the next annual period. No additional charges will be made against You for increases in User Count unless there is an excessive increase due to a merger, acquisition or growth. The User Count cannot be decreased at any time during the Initial Term unless specifically agreed to by the Parties in writing.

5. RESTRICTIONS. The Software is licensed, not sold. You may not use the Software for any purpose beyond the scope of the licenses granted in this Agreement, and all other rights are reserved by Ivanti or its suppliers. Without limiting the generality of the foregoing and except as expressly permitted in this Agreement, You will not (and will not permit any User or third party to): (a) authorize or permit access to or use of the Software by persons other than Users or Analysts; (b) assign, sublicense, distribute, sell, lease, rent, novate or otherwise transfer or convey the Software, or Documentation to any third party without Ivanti's prior written consent, except as set forth in the assignment provision in this Agreement, or disclose the software license key to the Software to any third party; (c) pledge as security or otherwise encumber the rights granted under this Agreement; (d) modify, adapt or create any derivative works of the Software (or any component thereof) or the Documentation; (e) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Software except and only to the extent: (i) that applicable law expressly permits such actions despite this limitation; or (ii) such actions are required to debug changes to any third party open source software libraries linked to by the Software; (f) use the Software as a service provider or application service provider for third parties; (g) circumvent or attempt to circumvent any technical restrictions in the Software; (h) remove, alter or obscure any proprietary notices or legends from the Software or any copies thereof; or (i) violate Ivanti's Acceptable Use Policy located

at <https://www.ivanti.com/company/legal>; (j) employ or authorize a competitor of Ivanti to use or view the Software or Documentation without the prior written consent of Ivanti.

To the extent that any applicable mandatory laws give You the right to perform any of the aforementioned activities without the consent of Ivanti to gain certain information about the Software, You hereby agree that, before You exercise any such rights, You shall first request such information from Ivanti in writing detailing the purpose for which You need the information. Only if and after Ivanti, at its sole discretion, denies Your request, shall You exercise Your statutory rights.

6. TITLE. Ivanti and its licensors (if any) retain all rights, title and interest, including all patent, copyright, trade secret, trademark, moral rights and other intellectual property rights, in and to the Software and Ivanti expressly reserves all rights not expressly granted under this Agreement.

7. SUPPORT AND MAINTENANCE SERVICES. Standard Support and Maintenance Services, Updates and Upgrades are included in the price of the Software if it is purchased as a Subscription License, a SaaS Offering, or an ELA. You may purchase or upgrade Support and Maintenance Services for the Software separately. Except as set forth herein, You have no rights to any Updates or Upgrades unless You purchase Support and Maintenance Services for the Software. If You purchase Support and Maintenance Services for the Software, You are required to purchase and maintain such Support and Maintenance Services for all licenses of the Software. All Support and Maintenance Services are subject to Ivanti's then-current Supplemental Terms for the Support and Maintenance Services found at <https://www.ivanti.com/company/legal/support-terms> and the relevant end-of-life policies found at <https://forums.ivanti.com/s/end-of-life>.

8. PROFESSIONAL SERVICES AND TRAINING.

a. Statement of Work. You may engage Ivanti to provide certain Professional Services pursuant to a statement of work or similar document, whether in print or online, which describes the tasks or services to be provided ("SOW"). Each SOW shall incorporate this Agreement by reference, be governed by and subject to the terms and conditions of this Agreement, and in the event of any conflict or inconsistency between this Agreement and the SOW, this Agreement shall take precedence.

b. Customer Cooperation. You shall provide Ivanti with all necessary cooperation, information and support that may reasonably be required by Ivanti for the performance of the Professional Services including, without limitation, access to suitably configured computers, software products and applicable passwords, at such times as Ivanti may request. You shall further perform such other obligations as specified in the SOW.

c. Postponing and Rescheduling. Unless otherwise agreed by both Parties in writing, if You postpone or reschedule a Professional Services project fewer than ten (10) business days but more than five (5) business days prior to the start date of a project, You shall pay Ivanti fees equal to the fees quoted for one (1) day of Professional Services under the project or \$2,500, whichever is less. If You postpone or reschedule a project fewer than five (5) business days prior to the start date of a project, You shall pay Ivanti fees equal to the fees quoted for: (i) the number of days of Professional Services postponed, (ii) one (1) week of Professional Services due for the project as if it had been fully performed, or (iii) \$12,500, whichever is less.

Any rescheduling of Professional Services under a SOW shall be subject at all times to the SOW's completion criteria and/or any long-stop dates specified in the SOW.

d. **Implementation Practices.** Ivanti uses, develops and refines processes, procedures, best practices, computer software code, general knowledge, skills, experience, ideas, know-how, and implementation techniques (collectively, "Implementation Practices") by providing implementation and configuration services to many customers. You benefit from those Implementation Practices and agree that Ivanti owns and is free to use the Implementation Practices in its sole discretion, including Implementation Practices developed or refined in the course of providing Professional Services to You, so long as the Implementation Practices do not include the use of or reference to Your Confidential Information (as defined below). Ivanti grants You a non-exclusive, non-transferable, royalty-free, perpetual, and limited license to use the Implementation Practices within Your organization, for the purpose for which the Professional Services were provided. In the event that the Professional Services involve Ivanti software products licensed to You under a separate license agreement, only the terms set out in such separate license agreement shall apply in respect to each such Ivanti software product. For the avoidance of doubt, all materials provided by You to Ivanti in connection with the Professional Services shall remain Your property.

e. **Travel.** The amount of time that Ivanti will be on-site at Your location for Professional Services is subject to the Ivanti project manager's discretion. If You require that Ivanti be on-site for more time than advised by the Ivanti project manager, then Ivanti will invoice and You agree to pay for Ivanti's travel expenses for the additional time on-site.

f. **Training Courses.** You may also purchase training from the Ivanti Advantage Learning. Payment for training courses is managed through the purchase of an individual license (1 User) or enterprise license (10 Users). Private training courses may be purchased as well. Cancellation fees are due for customer cancelled onsite private training courses at a rate of fifty percent (50%) of the course fee if cancelled within one (1) week of the start of the course, or one hundred percent (100%) of the course fee if the course is not attended or if notice of cancellation is given less than one (1) week before the start of the course. All Ivanti Advantage Learning courses and offerings are subject to Ivanti's then-current terms of use for Ivanti Advantage Learning found at <https://www.ivanti.com/company/legal/terms-of-use-ivanti-advantage-learning>. Orders for Ivanti Advantage Learning training courses and Professional Services expire if not used within one (1) year from the date of order.

9. **PAYMENT.** You agree to pay, without setoff or deduction, the amounts set forth in the Invoice. Fees for any Support and Maintenance Services shall be paid in advance of the relevant term covered. Renewal fees are due on or before the annual renewal date. Fees for the Software purchased as a Subscription License, a SaaS Offering, or as an ELA shall be paid for either i) as a lump sum for the entire Initial Term or Renewal Term at the time of purchase, or ii) according to the annual payment schedule for each year of the Initial Term or Renewal Term set forth in the Invoice.

Ivanti will provide the Professional Services as set forth on the applicable quote, plus a fixed daily rate for travel and accommodation expenses. Professional Services shall be delivered on either (a) a prepaid basis which will be invoiced upon receipt of a purchase order, or (b) a time and materials basis which will be invoiced monthly as the Professional Services are performed. All charges are non-refundable unless specifically stated otherwise in the relevant SOW.

Unless otherwise agreed, all such fees shall be due and payable within thirty (30) days from the date of the Invoice in U.S. Dollars, Euros, or British Pound Sterling, depending on the local currency of the contracting Ivanti entity or Reseller, or as otherwise indicated in the Invoice. A hard copy purchase order number and VAT ID (where applicable) must be provided with all orders.

If You fail to make a payment when due, You agree that Ivanti may charge interest at the lesser of a rate of one and one-half percent (1.5%) per month or the maximum rate allowed by law, which interest will accumulate on the outstanding balance on a daily basis until paid in full. You agree to reimburse Ivanti for all reasonable costs, including legal fees and related costs, Ivanti incurs in collecting any late payments and interest. Ivanti will be entitled to terminate all licenses, and services provided hereunder upon thirty (30) days prior written notice to You if You fail to pay any required fees when due. If You fail to pay undisputed amounts in accordance with the terms and conditions of this Agreement for any SaaS Offering, Ivanti shall have the right, in addition to any of its other rights or remedies, to suspend Your access to the SaaS Offering, without liability to You until such amounts are paid in full.

Except as expressly provided otherwise in this Agreement, all payments by You (whether to Ivanti or a Reseller) are nonrefundable and not available for credit for the purchase of other Software.

If You dispute any fees, taxes, or other charges billed by a Reseller or Ivanti under this Agreement, You must notify Ivanti, in writing, of the disputed amount and any relevant information regarding the circumstances of the dispute. Ivanti shall acknowledge receipt of the disputed information in writing to You. All Parties agree to work cooperatively to resolve any such disputed amounts. If You fail to provide Ivanti with a notice of such a disputed amount within twenty (20) business days following receipt of the Invoice for such disputed charge, then such amount is deemed undisputed and due.

All prices exclude value-added tax, sales tax and any other applicable tax, unless expressly stated otherwise. In the event that any withholding, sales, value-added, use or other taxes or government fees, assessments or charges are payable because of this Agreement, then You agree to pay all such taxes, fees, assessments and charges in addition to all other payments. If Ivanti is required to make any such payments, You agree to reimburse Ivanti for such payments promptly upon notice.

If You are purchasing the Software, Support and Maintenance Services and/or Professional Services through a Reseller, then the payment terms and associated payment obligations herein do not apply to You to the extent of such purchase(s), instead Your payment terms and obligations with the Reseller would apply to any such purchase(s).

10. **CONFIDENTIALITY.** Each Party shall keep confidential, and not disclose to any third party (except each Party's respective employees or staff members or as maybe required by law or any legal or regulatory authority) any Confidential Information which may be provided in connection with this Agreement. "Confidential Information" means any non-public information disclosed by one Party to the other Party, either directly or indirectly, whether communicated in writing, orally or by inspection of tangible objects (including, without limitation, pricing, trade secrets, product plans, products, services, customers, Software, designs, inventions, processes, drawings, engineering, hardware configuration information, marketing or financial information), which is designated as "Confidential," "Proprietary" or some similar designation. Information communicated orally will be considered to be Confidential Information if such



information is identified as Confidential Information at the time of its disclosure, or if such information by its nature should reasonably be understood by the receiving Party to be confidential. Confidential Information will include this Agreement, any and all non-public information relating to any Software and any associated training, Documentation and other related materials, regardless of whether or not such materials are marked as "Confidential," "Proprietary" or some similar designation. Confidential Information may also include information that is disclosed to a Party by one or more third parties. Notwithstanding the foregoing, Confidential Information will not include any information that: (a) was publicly known prior to the time of disclosure by the disclosing Party; (b) becomes publicly known after disclosure by the disclosing party to the receiving Party through no action or inaction of the receiving Party; (c) is already in the possession of the receiving Party at the time of disclosure by the disclosing Party (as shown by the receiving Party's files and records) prior to the time of disclosure; (d) is obtained by the receiving Party from a third party without a breach of such third party's obligations of confidentiality; or (e) is independently developed by the receiving Party without use of or reference to the disclosing Party's Confidential Information (as shown by documents and other competent evidence in the receiving Party's possession). Notwithstanding the obligations set forth above, the receiving Party may disclose the Confidential Information of the disclosing Party to the limited extent such disclosure is required by law to be disclosed by the receiving Party, provided that the receiving Party will promptly give the disclosing Party written notice of such requirement prior to any disclosure so that the disclosing Party may have sufficient time to seek a protective order or other appropriate relief.

## 11. INDEMNIFICATION.

a. **Defense of Infringement Claims.** Ivanti will, at its expense, either defend You from or settle any claim, proceeding, or suit brought by a third party against You alleging that Your use of the Software infringes or misappropriates any patent, copyright, trade secret, trademark, or other intellectual property right ("Infringement Claim"). You must (i) give Ivanti prompt written notice of the Infringement Claim; (ii) grant Ivanti full and complete control over the defense and settlement of the Infringement Claim; (iii) provide assistance in connection with the defense and settlement of the Infringement Claim as Ivanti may reasonably request; (iv) comply with any settlement or court order made in connection with the Infringement Claim; and (v) not make any admission of liability, agreement or compromise in relation to the Infringement Claim nor defend or settle any Infringement Claim without Ivanti's prior written consent. You may participate in the defense of the Infringement Claim at Your own expense and with counsel of Your own choosing, subject to Ivanti's sole control over the defense and settlement of the Infringement Claim as provided above.

b. **Indemnification of Infringement Claims.** Ivanti will indemnify You and Your Affiliates from and pay: (i) all damages, costs, and attorneys' fees finally awarded against You and Your Affiliates in any Infringement Claim; (ii) all out-of-pocket costs, including reasonable attorneys' fees incurred by You in connection with the defense of an Infringement Claim (other than attorneys' fees and costs incurred without Ivanti's consent after Ivanti has accepted defense of the Infringement Claim and expenses incurred pursuant to the last sentence of the prior section); and (iii) all amounts that Ivanti agrees to pay to any third party to settle any Infringement Claim.

c. **Exclusions from Obligations.** Ivanti has no obligation to indemnify You for any Infringement Claim to the extent that it arises out of or is based upon (i) Your use of the Software in combination with third-party products or services not authorized by Ivanti or the Documentation; (ii) any aspect of the Software

configured specifically for You to comply with designs, requirements, or specifications required by or provided by or on Your behalf; (iii) use of the Software by You, any User, any Analyst, or any third party outside the scope of the rights granted in this Agreement; (iv) failure of You, any User, any Analyst, or any third party to use the Software in accordance with the Documentation or any instructions provided by Ivanti; (v) failure of You to use the most recent version of the Software (including any Updates or Upgrades provided to You by Ivanti); or (vi) any unauthorized modification of the Software or SaaS Offering.

d. **Infringement Remedies.** In the defense or settlement of any Infringement Claim, Ivanti may, at its sole option and expense: (i) procure for You a license to continue using the Software or SaaS Offering; (ii) replace or modify the allegedly infringing technology to avoid the infringement; or (iii) if the foregoing options are not commercially feasible in Ivanti's sole judgment, refund any prepaid, unused SaaS Offering fees as of the date of termination or Software license fees depreciated on a straight line basis over thirty-six (36) months. The foregoing states Ivanti's sole and exclusive liability, and Your sole and exclusive remedy, for the actual or alleged infringement or misappropriation of any third-party intellectual property right by the Software or SaaS Offering.

e. **Ivanti Indemnitees.** You agree to hold harmless, indemnify, or at Your option, settle, any third party claim, suit or proceeding brought against Ivanti, its Affiliates and their respective employees, officers and directors ("Ivanti Indemnitee(s)") arising out of (i) Your unauthorized use of the Software and related services; (ii) Ivanti's compliance with Your designs, specifications or instructions; (iii) Your unauthorized modification of the Software or SaaS Offering; and (iv) Your instructions or Your failure to comply with the obligations as set forth in Section 16(c) of this Agreement and the DPA, and You shall pay all third party costs and damages awarded in judgment of such claim or agreed to in settlement of such claim between You and such third party; provided that Ivanti Indemnitee(s): (a) provide You with prompt notification of the claim, such that You are not prejudiced by any delay in such notification; and (b) provide reasonable assistance in connection with the defense or settlement, at Your expense.

## 12. LIMITED WARRANTY AND DISCLAIMER.

a. **Limited Warranty.** Ivanti warrants that: (i) for a period of ninety (90) days from the date of purchase, the Software will perform substantially in accordance with the Documentation, (ii) for the duration of the applicable subscription term to the SaaS Offering, the SaaS Offering will perform substantially in accordance with the Documentation, and (iii) the Support and Maintenance Services and Professional Services will be provided in a professional and workmanlike manner. If the Support and Maintenance Services or Professional Services are not provided in a workmanlike manner, You have a period of thirty (30) days from delivery to provide written notice of Your warranty claim. This limited warranty will not apply unless: (i) the Software has been properly installed and used at all times in accordance with the Documentation; (ii) no unauthorized modification, deletion or addition has been made to the Software, SaaS Offering, Support and Maintenance Services, or Professional Services; and (iii) Ivanti receives written notice of the non-conformity within the warranty period. Ivanti will use commercially reasonable efforts to deliver the Software to You free from any viruses and malicious programs or programming devices designed to modify, delete, damage, disable or provide unauthorized access to the Software or Your data.

b. **Exclusive Remedy.** Ivanti and its Resellers' entire liability and Your exclusive remedy under this warranty will be, at the sole option of Ivanti and subject to applicable law, (i) to repair or replace the

Software, the SaaS Offering, Support and Maintenance Services and/or Professional Services to perform per the warranty within a reasonable time, (ii) to refund, on a pro-rated basis, the fees paid for the nonconforming SaaS Offering and terminate this Agreement and Your right to use the SaaS Offering, or (iii) to refund the fees paid for the nonconforming Software, Support and Maintenance Services and/or Professional Services and terminate this Agreement and Your right to use the Software (subject to You deleting all copies of the Software within Your possession and control and certifying in writing to Ivanti that You have done so).

c. Third Party Products and Services. As a convenience to You, Ivanti resells certain products that are owned by third parties and are not licensed by Ivanti (“Resale Products”). Resale Products are not included as part of the Software, are not required or necessary for use of the Software and will be identified on the Invoice as Resale Products. Any Resale Products provided by Ivanti are provided pursuant to the terms of the applicable third-party agreement, and Your use of any such Resale Products constitutes agreement to comply with the terms of the applicable third-party agreement. Ivanti assumes no responsibility for, and specifically disclaims any liability or obligation with respect to, any Resale Products. All Resale Products are provided with the third party’s warranty and without any additional warranty of any kind, whether express or implied. If support and maintenance is offered for a specific Resale Product and You purchase directly from Ivanti, Ivanti shall distribute the applicable Resale Product error correction, update, upgrade and other release provided to Ivanti by the third-party licensor.

The Software may contain features designed to interface with applications or services provided or made available by third parties that are not In-Licensed Materials (“Third-Party Services”). In order to use a feature in connection with a Third-Party Service, You must have a subscription or license from the provider of the relevant Third-Party Service. If the Third-Party Services are no longer available or if the applicable third-party provider no longer allows the Third-Party Services to interface with the Software (for whatever reason), then such features will no longer be available or function in the Software and You will not be entitled to any refund, credit or other compensation from Ivanti or the provider of the applicable Third-Party Service. Ivanti hereby disclaims all warranties, indemnities, obligations, and other liabilities in connection with any interface or integration with the Third-Party Service. Further, Ivanti disclaims all warranties, indemnities, obligations, and other liabilities in connection with any Third-Party Service.

d. **DISCLAIMER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR THE ABOVE LIMITED WARRANTY, THE SOFTWARE, SAAS OFFERING, SUPPORT AND MAINTENANCE SERVICES, AND PROFESSIONAL SERVICES ARE PROVIDED “AS IS” AND “WITH ALL FAULTS” AND IVANTI AND ITS LICENSORS MAKE NO WARRANTIES OR CONDITIONS OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF OPERABILITY, CONDITION, TITLE, NON-INFRINGEMENT, NON-INTERFERENCE, VALUE, ACCURACY OR QUALITY OF DATA, AS WELL AS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT. IVANTI CANNOT GUARANTEE AND DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE OR PROVISION OF THE SAAS OFFERING WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS CAN BE CORRECTED. THE SOFTWARE AND SAAS OFFERING ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR DISTRIBUTION WITH ANY**

EQUIPMENT, THE FAILURE OF WHICH COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

13. LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES AGREE THAT NEITHER PARTY, ITS RESPECTIVE AFFILIATES OR ITS OR THEIR LICENSORS OR RESELLERS SHALL BE LIABLE FOR ANY LOSS OF INCOME, LOSS OF OPPORTUNITY OR PROFITS, LOSS OF GOODWILL, LOSS OF DATA OR FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES ARISING FROM USE OF THE SOFTWARE, UPDATES OR UPGRADES, THIRD PARTY SOFTWARE, SAAS OFFERING, OR OTHERWISE ARISING IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION THE DPA, THE SUPPORT AND MAINTENANCE SERVICES AND/OR PROFESSIONAL SERVICES, HOWSOEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE). TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF EITHER PARTY, ITS RESPECTIVE AFFILIATES OR ITS OR THEIR LICENSORS OR RESELLERS ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE AMOUNT PAID FOR THE AFFECTED SOFTWARE OR SAAS OFFERING, OR APPLICABLE SUPPORT AND MAINTENANCE SERVICE OR PROFESSIONAL SERVICE IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THIS LIMITATION WILL APPLY EVEN IF A PARTY, ITS AFFILIATES OR ITS OR THEIR LICENSORS OR RESELLERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE PARTIES ACKNOWLEDGE THAT THE FEES REFLECT THIS ALLOCATION OF RISK. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU. THE SOFTWARE IS NOT DESIGNED OR INTENDED FOR USE IN MISSION CRITICAL APPLICATIONS IN WHICH THE FAILURE OF THE SOFTWARE COULD CAUSE SUBSTANTIAL PROPERTY DAMAGE, PERSONAL INJURY OR DEATH. IVANTI DISCLAIMS ANY LIABILITY FOR USE OF THE SOFTWARE IN ANY SUCH MISSION CRITICAL APPLICATION(S). THE LIMITATIONS OF LIABILITY IN THIS SECTION DO NOT APPLY TO: (A) YOUR OBLIGATION TO PAY FEES PURSUANT TO SECTION 9 (PAYMENT); OR (B) ANY CLAIMS AGAINST YOU FOR INFRINGEMENT OF IVANTI'S INTELLECTUAL PROPERTY, INCLUDING WITHOUT LIMITATION COPYRIGHTS IN THE SOFTWARE.

14. TERM AND TERMINATION.

a. Term. The term of this Agreement will be the period specified in the Invoice, or if no period is specified, as otherwise agreed upon or until the Agreement is terminated (the "Initial Term"). At the end of the Initial Term, this Agreement will automatically renew for additional terms of one (1) year or as otherwise agreed to by the Parties (each a "Renewal Term"). Either Party may terminate this Agreement at the end of the Initial Term or any Renewal Term (as measured from the Effective Date) on ninety (90) days' prior notice to the other Party.

b. Termination for Cause. Either Party may terminate this Agreement in the event that the other Party (i) materially breaches this Agreement and the breaching Party fails to remedy such breach (if such breach is

capable of remedy) within thirty (30) days from the other Party's written notice or (ii) becomes insolvent or bankrupt, is liquidated or is dissolved, or ceases substantially all of its business activities.

c. Early Termination. If You terminate the Agreement before the end of the Initial Term or Renewal Term for any reason other than a material breach of the Agreement by Ivanti, then Ivanti may assess and invoice You for all unpaid fees for the remainder of the Initial Term or Renewal Term. ("Termination Fees"). Additionally, Ivanti may assess and invoice You for any upcoming renewal fees if You do not provide Ivanti with written notice of Your intent to terminate the Agreement at least ninety (90) days prior to the end of the Initial Term or a Renewal Term ("Renewal Fees"). You shall not be entitled to any refund or credit for any unused fees upon any such termination.

d. Effect of Termination. Upon termination of this Agreement, all rights granted herein will terminate and You must immediately remove and destroy all copies of the Software, including all backup copies. Any obligations to pay fees or expenses, including any applicable Termination Fees and/or Renewal Fees, incurred prior to or at the time of termination shall survive termination.

15. AUDIT. During the term of this Agreement and for two (2) years after the later of (i) termination of the Agreement or Support and Maintenance Services for the applicable Software, or (ii) installation of the Software, You shall maintain accurate and complete records regarding Your use of the Software and shall provide such records to Ivanti upon request. Ivanti may audit Your use of the Software to verify that Your use of the Software is in compliance with this Agreement. Within thirty (30) days of written request, You shall respond to and permit Ivanti (or such persons appointed by Ivanti) to conduct an audit of Your use of the Software using such tools and/or software available to Ivanti from time to time. Ivanti may not conduct an audit more than once per calendar year and such audits shall take place during normal business hours and on reasonable prior notice. You agree not to (i) delete or remove distributed licenses or (ii) receive a transfer of licenses from Your managed service provider (if any) to ensure You are in compliance in anticipation of or during an audit. The aforementioned limit on the number of audits that can be performed in a calendar year shall not apply if any such misconduct is discovered or reasonably suspected by Ivanti. Without prejudice to any other rights and remedies, where such audit reveals any underpayment, You shall promptly pay Ivanti at the then-current list price for: (i) all licenses of the Software needed to become compliant, (ii) Support and Maintenance Services for the current term (if applicable), and (iii) Support and Maintenance Services for the period of over usage, up to three (3) years. With the exclusion of ELA Offerings, if any such underpayment is more than five percent (5%) of the amounts paid or payable by You for the audited period, You shall promptly reimburse Ivanti for the reasonable costs of the audit and for all over use of licenses and applicable Support and Maintenance Services for the period of over usage, up to three (3) years. If You fail to comply with Ivanti's requests in this section, You will be in material breach of this Agreement and Ivanti may reduce the functionality of or render the Software inoperative in addition to any other rights and remedies under this Agreement. You agree that Ivanti's right to perform an audit under this Agreement will not require any amendments, addendum, or additional agreements.

## 16. GENERAL.

a. Applicable Laws. Each Party will comply with any statutes and regulations that apply to its performance under this Agreement, including but not limited to those applicable to the privacy and security

of personal information, including trans-border data transfers and data breach notification requirements as required by law.

b. Data. In addition to any other provisions with respect to data use and handling included in this Agreement and any supplemental terms and conditions, Ivanti uses and handles Your data in accordance with its Privacy Policy located at <https://www.ivanti.com/company/legal/privacy-policy>.

c. Personal Data. Ivanti's processing of personal data is subject to its Data Processing Addendum found at <https://rs.ivanti.com/legal/dataprocessingaddendum.pdf> (the "DPA").

d. FedRAMP Rules of Behavior. If You purchase Ivanti's FedRAMP SaaS Environment then You, along with Your system administrators, employees, contractors, end-users, and other third parties who are given access to the FedRAMP SaaS Environment, are subject to the FedRAMP Rules of Behavior located at <http://www.ivanti.com/company/legal/fedramp>.

e. Export Restriction. The Software may be subject to certain export and import control laws and regulations, including the United States Export Administration Act (and its associated regulations), and regulations of the United States Bureau of Industry and Security, the United Kingdom Department for Business, Innovation & Skills and other applicable agencies. You agree not to directly or indirectly, export, re-export, or release the Software to, or make the Software accessible from, any country, jurisdiction or person to which export, re-export, or release is prohibited by applicable law. You shall comply with all applicable laws 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 Software available to Users outside Your country of domicile. You represent that You and Your Affiliates are not on any denied persons or restricted party list or other list published by the U.S. Government of persons or entities to whom exports or re-exports of products subject to export controls are forbidden. You agree to promptly notify Ivanti if at any time the representation in the foregoing sentence is no longer accurate.

f. U.S. Government End Users. Each of the components that constitute the Software is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Software with only those rights set forth herein. If Software is acquired for or on behalf of the U.S. Government, then it is recognized and agreed that the Software: (i) was developed at private expense; (ii) was not required to be originated or developed under a Government contract; and (iii) was not generated as a necessary part of performing a Government contract. United States government agencies and entities and others acquiring under a United States government contract shall have only those rights, and shall be subject to all restrictions, set forth in this Agreement.

g. Authorized Resellers. If You purchase the Software through a Reseller, You acknowledge that the Reseller and Ivanti are independent of each other and that the Reseller does not have any authority to bind Ivanti in any way, make any modifications to this Agreement or to make any warranties or representations on Ivanti's behalf and that Ivanti has no liability whatsoever for any actions or omissions of any Reseller.

h. Governing Law. If the 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 You consent to the exclusive jurisdiction and venue in the State and Federal courts within Salt Lake County, Utah. If this Agreement is with Ivanti U.K. Ltd. or Ivanti International Limited, it will be governed by the laws of England and Wales without regard to conflict of laws principles and any dispute arising out of or in connection with this Agreement You 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 any dispute arising out of or in connection with the Agreement You consent to the exclusive jurisdiction and venue in the courts within Tokyo, Japan. If this Agreement is with Ivanti Software (Beijing) Co., Ltd., it will be governed by the laws of China without regard to conflict of laws principles and any dispute arising out of or in connection with the Agreement You 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.

i. Severability. If any provision of this Agreement is held to be unenforceable, void or invalid under applicable law, such provision shall be deemed omitted and the remaining provisions will remain in full force.

j. Entire Agreement; English Language Agreement Controls. This Agreement, including without limitation the Supplemental Terms or DPA represent the complete and exclusive statement of the agreement between Ivanti and You with respect to the Software, Support and Maintenance Services, and Professional Services, and supersedes all prior or contemporaneous oral or written communications and arrangements concerning the subject matter contained herein. Any printed or other terms and conditions on a purchase order or similar order document conflicting with, or purporting to add to, the terms and conditions of this Agreement or its exhibits and addenda will be of no force or effect. You agree that you shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement or any document(s) expressly referred to herein. it. In the event of any inconsistency between this Agreement in English language and any translation of it into another language, the English language version of the Agreement shall control. Unless the Parties have a different agreement signed by both Parties, all use of the Software, SaaS Offering, Support and Maintenance Services, and Professional Services are subject to the terms of this Agreement.

k. No Waiver. No failure or delay to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other rights or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right shall preclude or restrict the further exercise of that or any other right or remedy. No statement or representation, other than by a Party's authorized representative in a written waiver, shall constitute a waiver of any rights or remedies.

l. No Assignment. Except for a transfer of all or substantially all of a Party's business and assets, whether by merger, sale of assets, sale of stock, or otherwise, neither Party shall assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement without the prior written consent of the other Party.

- m. Force Majeure. Neither Party will incur any liability to the other Party for any loss or damage resulting from any delay or failure to perform any part of the Agreement if such failure or delay is caused by circumstances beyond the Parties' reasonable control including, without limitation, flood, fire, acts of war, terrorism, earthquake, acts of God, and governmental acts, orders, or restrictions; however, inability to meet financial obligations is expressly excluded. Ivanti shall not be liable for any failure of or delay in performing its obligations on account of Your failure to perform Your obligations under this Agreement.
- n. Third Party Rights. A person who is not a party to the Agreement shall not have any rights under or in connection with it.
- o. Variation. Any variation or amendment to the Agreement, except as provided for herein, shall only be binding when agreed in writing and signed by both Parties.
- p. Counterparts. The Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement. The Agreement may be executed in person or electronically and delivered physically or electronically in Portable Document Format ("PDF"). The Parties agree that such electronic execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each Party may use such facsimile, PDF, or e-signatures as evidence of the execution and delivery of this Agreement by all Parties to the same extent that an original signature could be used.
- q. Survival. Sections 2, 3, 7, 8, 10, 11, 12, 13, 14, 15 and 16 shall survive the termination or expiration of this Agreement.
- r. Referrals. You agree to make commercially reasonable efforts to work with Ivanti in the event Ivanti asks to (i) use Your name and logo on Ivanti's website, in publications, brochures and similar print and/or digital media, in presentations, and in press releases; (ii) speak to the press and/or industry analysts regarding Your experience as a customer of Ivanti; (iii) provide Your company name and contact information to other customers or potential customers and engage in telephone conversations with such companies as a part of Ivanti's reference and/or referral programs; and (iv) participate in written and/or video case studies regarding Your experience as an Ivanti customer. If and to the extent You agree to participate in any of the above scenarios, You also grant Ivanti the right to use, publish and copyright, without compensation, any quotes made by You and/or any videos or photos taken in relation to Your comments about Ivanti and/or its products and services for endorsement, advertisement and marketing of the products and/or services in any and all manner and media throughout the world in perpetuity. Ivanti may edit any such quotes and videos for space or clarity, or use such quotes and videos in whole or in part as it deems appropriate in its sole and absolute discretion and does not need to submit advertising or other materials to You for approval.
- s. Contact Information. Please direct legal notices or other correspondence, if to Ivanti, Inc., to 10377 South Jordan Gateway, South Jordan, UT 84095, Attention: Legal Department.
- t. Intellectual Property and Trademark Usage. The Software and SaaS Offerings are protected by the U.S. and International Patents listed on <https://www.ivanti.com/company/legal/ivanti-patents>. For information regarding acceptable third-party use of Ivanti trademarks, refer to <https://www.ivanti.com/company/legal/trademark> or contact Ivanti legal representatives.



u. Hardware. If You purchase any hardware from Ivanti, then such hardware shall be provided under the hardware terms and conditions that accompany the hardware.

w. In-Licensed Materials and Open Source. The Software may contain or may operate with software, services or other technology that is not owned by Ivanti but has been licensed to Ivanti by a third party and may be necessary for the full operation of the Software (“In-Licensed Materials”) or that is available under open source or free software licenses. The In-Licensed Materials may be subject to additional terms and conditions, as identified on <https://www.ivanti.com/company/legal/thirdpartyterms> or as otherwise made available to You. Such terms and conditions are incorporated by reference herein. To the extent Ivanti uses open source software in the Software, the terms and restrictions in this Agreement shall not prevent or restrict You from exercising additional or different rights to such open source software in accordance with the applicable open source licenses.

x. Your Affiliates. Your Affiliates may purchase Ivanti products and/or services under this Agreement by (i) executing a participation agreement with Ivanti pursuant to which it agrees to be bound by the terms of this Agreement applicable to You, and (ii) passing an Ivanti credit check, after which it may purchase Ivanti products and/or services directly from Ivanti or from a Reseller. For purposes of such purchase, references to “You” and “Your” shall be deemed to refer to Your Affiliate making such purchase.

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