

- 1. Scope.** Pursuant to the written offer (the "**Quote**" or "**Estimate**") to sell certain hardware and/or software products (the "**Product**") which references these Terms of Sale for Products (the "**Terms of Sale**"), ZAVIYA Inc., a Texas corporation doing business as Zaviya Solutions Group ("**ZSG**"), hereby offers to sell to the client named in the Quote or Estimate ("**Client**") such Products referenced therein. ZSG acts solely as a reseller or distributor of Products manufactured or developed by third parties, unless expressly stated otherwise in the Quote or Estimate.
- 2. Acknowledgment.** CLIENT ACKNOWLEDGES AND AGREES THAT: (A) THE SIGNED QUOTE (OR ESTIMATE) AND ANY WRITTEN ORDER TO PURCHASE THE PRODUCTS (A "**PURCHASE ORDER**") PROVIDED BY CLIENT TO ZSG IN RESPONSE TO SUCH QUOTE (OR ESTIMATE) IS MADE SUBJECT TO THESE TERMS OF SALE; (B) THESE TERMS OF SALE WILL GOVERN THE RELATIONSHIP BETWEEN ZSG AND CLIENT AND PREVAIL NOTWITHSTANDING ANY VARIANCE OR CONFLICT WITH ANY TERMS OR CONDITIONS CONTAINED IN ANY PURCHASE ORDER, STATEMENT OF WORK OR OTHER AGREEMENT OR INSTRUMENT SUBMITTED BY CLIENT TO ZSG; (C) ANY PREPRINTED OR OTHER TERMS OR CONDITIONS INCLUDED WITH OR IN ANY OF THE DOCUMENTS REFERENCED IN ITEM (B) WILL HAVE NO EFFECT WHATSOEVER; (D) ZSG RESERVES THE RIGHT TO REJECT OR ACCEPT ANY PURCHASE ORDER SUBMITTED BY CLIENT, IN ITS SOLE DISCRETION; (E) ZSG'S ACCEPTANCE OF ANY PURCHASE ORDER IS MADE SUBJECT TO CLIENT'S ACCEPTANCE OF THESE TERMS OF SALE. AND (F) CLIENT HAS READ, UNDERSTOOD, AND AGREES TO ALL TERMS AND CONDITIONS HEREIN, INCLUDING THE LIMITATIONS OF LIABILITY AND DISCLAIMERS OF WARRANTIES SET FORTH IN SECTIONS 12 AND 13.
- 3. Delivery.** ZSG will accept Client's Purchase Orders under these Terms of Sale for requested delivery of Products up to two months after the date of a Purchase Order. All delivery dates are estimates only and ZSG shall not be liable for any damages or penalties for failure to meet any estimated delivery date.
- 4. Prices.** Prices for Products will be stated in one or more invoices submitted by ZSG to Client (the "**Invoices**") for payment Prices for Products may be changed by ZSG upon one (1) day prior written notice to Client (the "**Notice Period**"). Purchase Orders received by ZSG during the Notice Period which specify a delivery date within 3 days following the expiration of the Notice Period, will be invoiced at the previously existing lower price for such Products. ZSG reserves the right to correct clerical errors in pricing.
- 5. Payment Terms.** Subject to approval by ZSG's credit department, Client commits to make payments upon delivery of Products, unless otherwise specified in the Invoice. ZSG reserves the right to specify different payment terms in the Invoice, including but not limited to requiring a percentage of the invoice amount due prior to ordering equipment. ZSG may require payment in full in advance for any order, regardless of prior dealings. ZSG reserves the right to charge Client interest on any delinquent balance. This interest is computed on a daily basis for each day the payment is delinquent at the lesser of (x) 5% per month, or (y) the maximum rate permitted by law. ZSG reserves the right to refuse shipment of Products to Client if any delinquent Invoices are outstanding. ZSG reserves the right to invoice Client upon the shipment of purchased Products to Client, including whole or partial orders and regardless of whether such Products is shipped to Client by ZSG or an Products distributor ("**Distributor**") or manufacturer ("**OEM**"), and payment will be due as specified in the invoice. ZSG may refuse to ship Products on credit for any reason or for no reason whatsoever. ZSG further reserves the right to refuse payment terms if, in ZSG's sole discretion, such terms would create an unreasonable credit risk for ZSG. In such event, deliveries of Products to Client will be available only on a C.O.D. or cash-in-advance basis. No payment by Client or receipt by ZSG of an amount lesser than the entire amount of an Invoice will be deemed to be other than on account of the earliest due amount, nor will any endorsement or statement on any check or letter accompanying any check or payment be deemed an accord and satisfaction, and ZSG may accept such check or payment without prejudice to ZSG's right to recover the balance of any amount due or pursue any other remedy provided for in these Terms of Sale. In connection with the foregoing, ZSG will have the absolute right in its sole discretion to apply any payment received from Client to any account of Client then not current and due and delinquent. Payment via Visa, Mastercard, American Express, other credit card, virtual card (e.g., American Express BIP), or any card or program similar to any of the foregoing will be accepted only if preapproved by ZSG in writing. Any such payments will be subject to a convenience/processing fee of at least 4% of the total fees paid via such payment method, which fee shall be added to the invoice.
- 6. Security Interest.** Client hereby grants to ZSG a purchase money security interest covering each shipment of Products made hereunder (and any proceeds thereof) in the full amount of the Invoice for such shipment, until payment on such Invoice is received in full by ZSG. Client agrees to sign and execute any and all documents as required by ZSG to perfect such security interest in the purchased Products.
- 7. Standard Order Procedure.** Products may only be ordered by Client by mailed or e-mailed Purchase Orders

referencing these Terms of Sale and stating the quantity, specific Products, applicable price, shipping instructions and requested delivery date. Client acknowledges and agrees that in the event any Purchase Order fails to reference these Terms of Sale, these Terms of Sale will nevertheless govern the relationship between ZSG and Client. Purchase Orders will be subject to written acceptance by ZSG and delivery schedules will be established in accordance with Products availability and ZSG's sole discretion regarding Client's credit status.

- 8. Change Orders, Cancellation and Rescheduling.** Any and all changes to previously submitted Purchase Orders sought to be made by Client must be provided by mail or e-mail notice from Client and are at ZSG's sole discretion and subject to ZSG's approval. All requests to cancel Purchase Orders and return Products must be pre-authorized by ZSG in writing. ZSG may accept returns for Products then-currently held in ZSG inventory within 12 hours of purchase. Purchase Orders for Products not held in ZSG inventory (including, but not limited, Products shipped directly from third party OEMs or Distributors) and software may not be cancelled or returned except under special circumstances and only upon pre-authorization by ZSG. If Client is permitted by ZSG to cancel all or any portion of a Purchase Order and/or return Products, it will pay a restocking charge equal to (a) the amount of any restocking charge imposed by the applicable OEM or Distributor, if any, or (b) 35% of the purchase price for any Products shipped from ZSG's inventory. If ZSG is unable to meet the requested delivery schedule, it will provide notice to Client as soon as it is reasonably aware of such situation. ZSG shall have no liability for any inability to meet a requested delivery schedule. No Products may be returned except in the event Client and ZSG have mutually agreed in writing.
- 9. Delivery; Title & Risk of Loss.** Delivery is F.O.B. Origin. Risk of loss or damage for Products will pass to Client on delivery of Products by ZSG or a Products Distributor or OEM, as applicable, to Client's common carrier. Products are deemed accepted by Client upon delivery to Client's common carrier. Client is responsible for payment of all costs relating to the shipment and insurance of any Products. ZSG shall have no obligation to select a carrier or arrange for shipping, and makes no representations or warranties regarding the carrier's performance. ZSG will make reasonable efforts, but will not be obligated, to deliver the Products in accordance with Client's shipping instructions and choice of carrier. Client is responsible for inspecting shipments upon arrival for any visible damage. Any damage must be clearly noted on the Bill of Lading at the time of delivery. Client is responsible for retaining a copy of the Bill of Lading with the damage noted and for filing any claims with the carrier. ZSG shall have no responsibility for any loss or damage occurring after delivery to the carrier. ZSG will make commercially reasonable efforts to deliver Products on or before the due

date as specified in any Purchase Order for such Products. ZSG will make reasonable efforts to expedite delivery of an "ASAP order" subject to Products availability, but is not obligated to make such delivery on an expedited basis. Title with respect to the Products will pass to Client only once payment is received in full by ZSG.

- 10. Taxes and Duties.** All fees for Products will be exclusive of all national, federal, state, local, property or any other governmental use, sales, excise, occupational, ad valorem, VAT taxes and duties, and any other similar taxes or duties. If any such tax, fee or charge is imposed on a transaction subject to these Terms of Sale, such tax will be paid by Client in addition to the invoiced fees. If ZSG is required to pay any such tax, fee or charge Client will reimburse ZSG for such payment promptly upon demand. All taxes, fees and charges with respect to ZSG's income or gross receipts derived from its provision of Products hereunder (including franchise, employment and income taxes of ZSG), will be the obligation of and paid by ZSG.
- 11. Exports.** The Parties acknowledge that Products and/or related confidential information provided under this Agreement may be subject to U.S. and applicable foreign export laws and regulations. Each party will comply with all applicable U.S. and foreign export laws and regulations and anti-boycott laws. Client shall be solely responsible for obtaining any necessary export licenses or permits and for ensuring compliance with all applicable export laws and regulations of any country into which Products are imported, re-exported or used.
- 12. Warranty Pass-Through.** ZSG's sole responsibility to Client with respect to any Products or components and parts thereof manufactured by a third party will be to pass through to Client such original Products manufacturer's available product warranty, if any. The product warranty provided by said third parties does not cover (a) any Products which has been altered or modified by Client, including, without limitation, any change, addition or improvement, and (b) any damage, defects, malfunctions or service failures caused by: (i) Client's failure to follow ZSG's or the original Products manufacturer's environmental, installation, operation or maintenance specifications or instructions; (ii) modifications, alterations or repairs made other than by ZSG or the original Products manufacturer; (iii) Client's mishandling, abuse, misuse, negligence or improper storage, servicing or operation of the Products (including, without limitation, use of Products that is not designed or suitable for use in conjunction with the Products purchased from ZSG); and (iv) power failures, surges, fire, flood, accident, actions of parties or other like events outside ZSG's control. Repairs necessitated during the warranty period by any of the foregoing causes specified in this Section 12 may be made by ZSG, at its sole discretion, and Client will pay ZSG standard charges for time and materials, together with all

shipping and handling charges arising from such repairs. CLIENT ACKNOWLEDGES AND AGREES THAT ZSG PROVIDES NO WARRANTY, WHETHER EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED.

13. LIMITATION OF LIABILITY. IN NO EVENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE AND STRICT LIABILITY), OR ANY OTHER LEGAL THEORY, WILL ACME BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO DAMAGES FOR PERSONAL INJURY, PROPERTY DAMAGE, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF USE, LOSS OF DATA, BUSINESS INTERRUPTION, OR ANY OTHER ECONOMIC LOSS, ARISING OUT OF OR IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE, USE, PERFORMANCE, FAILURE, OR INTERRUPTION OF PRODUCTS SOLD UNDER THESE TERMS OF SALE. NOTWITHSTANDING ANY OTHER PROVISION OF THESE TERMS OF SALE, ZSG'S AGGREGATE LIABILITY FOR DAMAGES HEREUNDER, ARISING FROM ANY CAUSE WHATSOEVER, WILL NOT EXCEED THE GREATER OF (A) THE TOTAL AMOUNT PAID BY THE CLIENT TO ZSG FOR THE SPECIFIC PRODUCTS GIVING RISE TO THE CLAIM, OR (B) \$1,000.00. THIS LIMITATION OF LIABILITY SHALL APPLY EVEN IF ANY EXCLUSIVE REMEDY PROVIDED HEREIN FAILS OF ITS ESSENTIAL PURPOSE. ZSG SHALL NOT BE LIABLE FOR DELAYS IN DELIVERY OR PERFORMANCE CAUSED BY FACTORS BEYOND ITS REASONABLE CONTROL, INCLUDING BUT NOT LIMITED TO SUPPLIER DELAYS, SHIPPING DELAYS, ACTS OF GOD, LABOR DISPUTES, OR GOVERNMENTAL ACTIONS. ZSG IS NOT RESPONSIBLE OR LIABLE FOR ANY CATASTROPHIC EVENTS, INJURIES, OR DAMAGE OCCURRING AT THE CUSTOMER SITE THAT ARE NOT DIRECTLY AND SOLELY CAUSED BY ZSG'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT IN THE INSTALLATION OF THE PRODUCTS. CLIENT ACKNOWLEDGES AND AGREES THAT THE PRICE OF THE PRODUCTS REFLECTS THE ALLOCATION OF RISK AND LIMITATIONS OF LIABILITY SET FORTH HEREIN, AND THAT THE PRICE WOULD BE SUBSTANTIALLY HIGHER IF ZSG WERE TO ASSUME ADDITIONAL LIABILITY.

14. Products Changes. ZSG reserves the right to change, improve or add any new Products or discontinue any Products at any time.

15. Indemnity. Client agrees to indemnify, defend, and hold ZSG harmless from and against any and all claims, liabilities, damages, losses, costs, expenses, and fees (including reasonable attorney's fees) arising out of or relating to: (a) Client's negligence, willful misconduct, or breach of these Terms of Sale; (b) Client's misuse, alteration, or improper handling of the Products; (c) any

claim that the Products as modified or used by Client infringe any patent, copyright, trademark, or other intellectual property right; (d) any injury to persons or damage to property caused by the Products while in Client's possession or control; or (e) any claim that the Products as supplied by ZSG infringe any patent, copyright, trademark, or other intellectual property right, to the extent such infringement is not due to ZSG's sole fault or the Products as supplied by ZSG.

16. Waiver. A waiver of any default, or of any of these Terms of Sale, will not be deemed to be a waiver of any other default or of any other term or condition, but will apply solely to the instance to which such waiver is directed. The exercise of any right or remedy provided in these Terms of Sale will be without prejudice to the right to exercise any other right or remedy provided by law or equity.

17. Entire Agreement. These Terms of Sale are the complete, final and exclusive statement of the terms and conditions of sale for the Products between ZSG and Client and supersedes any and all other agreements between them relating to the subject matter hereof. These Terms of Sale may not be modified except in a writing executed by both parties. No course of dealing or performance shall be relevant to supplement or explain any term used in these Terms of Sale. These Terms of Sale will prevail notwithstanding any variance or conflict with any terms contained in any Purchase Order statement of work or other agreement or instrument submitted by Client to ZSG.

18. Severability. In the event any provision of these Terms of Sale is found to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired thereby.

19. Force Majeure. ZSG will not be liable to Client for any alleged loss or damages resulting from the delivery of the Products being delayed by acts of Client, acts of civil or military authority, governmental priorities, fire, floods, epidemics, pandemic, quarantine, energy crises, strikes, labor trouble, war, riots, accidents, shortages, delays in transportation, failure of suppliers or subcontractors, or any other causes beyond the reasonable control of ZSG. This includes, but is not limited to, supply chain disruptions, supplier delays, or force majeure events affecting ZSG's ability to procure or deliver Products.

20. Assignment. Assignment of these Terms of Sale by either party will be prohibited without the express written consent of the other party; provided, that (a) ZSG reserves the right to subcontract any support or maintenance obligation in connection with the sale of such Products, (b) ZSG may assign these Terms of Sale and any of its rights hereunder in connection with its financing activities in

the ordinary course of business, and (c) either party may assign these Terms of Sale and its rights and obligations hereunder upon written notice to the other party in connection with a merger or sale of substantially all of its assets or capital stock. Any other attempted assignment in violation of this provision will be null and void.

21. Governing Law; Venue. These Terms of Sale will be construed in accordance with, and all disputes hereunder will be governed by, the laws of the State of Texas. Both parties agree that any action, suit or proceeding arising out of or relating to these Terms of Sale will be initiated and prosecuted in a state court or United States District Court located in Bexar County, Texas, and the parties irrevocably submit to the jurisdiction of any such court.

22. Attorney's Fees. In any action to enforce these Terms of Sale, the prevailing party will be awarded all reasonable court costs and attorney's fees incurred.