

TERMS AND CONDITIONS OF SALE – FEDERAL SALES

THESE **TERMS AND CONDITIONS OF SALE - FEDERAL SALES** (THE “TERMS”) GOVERN THE SALE OF PRODUCTS BY PELLERA TECHNOLOGIES (“PELLERA”) TO CLIENT. PELLERA AGREES TO SUPPLY THE PRODUCTS SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN. PELLERA'S ACCEPTANCE OF CLIENT'S PURCHASE ORDER OR EXECUTED PROPOSAL AND AGREEMENT TO PROVIDE PRODUCTS IS EXPRESSLY MADE CONDITIONAL ON CLIENT'S ACCEPTANCE OF THESE TERMS. IN THE EVENT CLIENT'S PURCHASE ORDER INCLUDES TERMS AND CONDITIONS THAT DIFFER FROM OR ARE IN ADDITION TO THESE TERMS SET FORTH HEREIN, CLIENT'S TERMS AND CONDITIONS ARE EXPRESSLY REJECTED BY PELLERA AND ARE NULL AND VOID.

1. DEFINITIONS.

- 1.1. “CLIENT” means the party who orders Products from PELLERA pursuant to these Terms.
- 1.2. “Confidential Information” means secret processes, trade secrets, customer lists, personnel statistics, pricing, pricing methods, techniques, inventions, specifications, ideas, processes, prototypes, models, drawings, marketing plans, financial data, computer programs, computer software, and any information included in a PELLERA Proposal.
- 1.3. “DFARS” means the Defense Federal Acquisition Regulations Supplement.
- 1.4. “Equipment” means any hardware products and features identified under an applicable Proposal.
- 1.5. “FAR” means the Federal Acquisition Regulations.
- 1.6. “Federal Government End User” means the federal government, federal government agencies, a federal government owned or affiliated corporation involved in federal procurement activities, federal contractors in support of a prime contract with the Federal government, and Federal Government cost reimbursement prime contractors and management and operating contractors that receive proper authorization under FAR Part 51 from federal agencies to make federal purchases or acquisitions where licenses granted and title to equipment vest in the Federal Government End User.
- 1.7. “PELLERA” or “PELLERA TECHNOLOGIES” means the legal entity operating under the Peller Technologies brand that is presenting the Proposal to CLIENT. The Peller Technologies brand includes Mainline Information Systems, LLC, Converge Technology Solutions US LLC, and subsidiaries and affiliates of the foregoing entities.
- 1.8. “Products” means collectively, Equipment, SKU Services, and Third Party Products.
- 1.9. “Proposal” means the quote, proposal or agreement or any other document submitted by PELLERA to CLIENT identifying the Products and corresponding prices.
- 1.10. “Purchase Order” means an offer by CLIENT to purchase the Products identified in the Proposal. Without limitation upon the generality of the foregoing language, Purchase Order shall include any documentation, purchase order, electronic order or any other purchase authorization submitted by CLIENT to PELLERA in response to a PELLERA Proposal.
- 1.11. “SOW Services” shall mean professional services engagements to be provided by PELLERA or PELLERA's authorized subcontractors to CLIENT pursuant to a separately executed statement of work, which shall reference a governing master services agreement (“MSA”).
- 1.12. “SKU Services” shall mean a) professional services delivered by PELLERA identified by a corresponding part number in a Proposal, b) Cisco Smart Net Total Care services, and c) services identified as “IBM PRIME BIDDER” in a Proposal, which will be delivered by International Business Machines Corporation (“IBM”).
- 1.13. “Third Party Products” means any third party software, maintenance or support services, toolkits, or third party remarketed services identified under an applicable Proposal, for which PELLERA will invoice and collect payment from CLIENT pursuant to the payment terms incorporated herein. For the avoidance of doubt, the applicable service provider or licensor will contract directly with CLIENT relating to the performance of Third Party Products.

2. FORMATION OF CONTRACT.

- 2.1. CLIENT's submission of a Purchase Order or executed Proposal to PELLERA constitutes an offer by CLIENT to purchase the Products subject to these Terms and formation of a contract is conditioned upon PELLERA's subsequent acceptance. PELLERA's acceptance of CLIENT's offer to purchase Products takes effect at the point where such offer is expressly accepted by PELLERA upon the earlier of PELLERA (i) sourcing the Products; or (ii) accepting CLIENT's payment for Products. Notwithstanding the foregoing, any Purchase Order terms are void and of no effect.
- 2.2. The sale of Products is subject to these Terms to the exclusion of any other terms and conditions stipulated or referred to by CLIENT. CLIENT acknowledges that it is aware of the contents of and agrees to be bound by these Terms. Neither PELLERA's acknowledgment of a Purchase Order nor PELLERA's failure to object to conflicting, different, or additional terms in a Purchase Order shall be deemed an acceptance of such terms and

conditions or a waiver of the provisions hereof. For the avoidance of doubt, these Terms contain the exclusive terms and conditions governing PELLERA's sale of Products to CLIENT.

3. SHIPPING; TRANSFER OF TITLE AND RISK OF LOSS; INSURANCE; INSTALLATION.

- 3.1. Upon delivery of Equipment, title and risk of loss for the Equipment transfers to CLIENT. Shipping is provided at no cost to the CLIENT. Expedited shipping requests will result in CLIENT incurring shipping charges.
- 3.2. Shipping terms are FOB Destination. PELLERA will provide, at no cost to CLIENT, standard shipping and transportation insurance for the physical risk of loss of the Equipment until delivery. In no case shall the insurance coverage provided by PELLERA exceed thirty (30) days from the date of Equipment delivery.
- 3.3. When applicable, installation charges for the Equipment will appear on the Proposal. CLIENT agrees to provide a secure location and safe working environment for delivery of the Products. In the event CLIENT fails to make the Equipment available for installation within six (6) months from the date the Equipment ships, additional charges may apply.

4. THIRD PARTY PRODUCTS.

- 4.1. PELLERA warrants that it is an authorized remarketer of any Third Party Products. For all Third Party Products, the applicable third party will be the party responsible for providing the Third Party Products to CLIENT and CLIENT will look solely to the third party for any loss, claims or damages arising from or related to the provision of such Third Party Products. CLIENT acknowledges that the Equipment may include Third Party Products in which PELLERA has no ownership or other proprietary rights and no title thereto shall be transferred hereunder. Any Third Party Products' agreement shall be separate and distinct from these Terms, and PELLERA and its assigns shall not have any rights or obligations thereunder or with respect to such Third Party Products. To the extent permitted by the third party provider's terms, if CLIENT cancels any Third Party Product during the term of the Third Party Product order, PELLERA reserves the right to apply cancellation fees and/or administrative expenses associated with the cancellation of the Third Party Product.
- 4.2. CLIENT acknowledges and agrees that PELLERA's acceptance of CLIENT's order for Third Party Products is contingent upon CLIENT executing the applicable third party's required terms and conditions within thirty (30) days of placing the order for Third Party Products with PELLERA. If CLIENT fails to execute the applicable third party's required terms and conditions within such thirty (30) day period, PELLERA reserves the right, at its option, to either (i) reject CLIENT's order, or (ii) cancel CLIENT's order and refund amounts paid by CLIENT to PELLERA for such Third Party Products.

5. SKU Services; SOW SERVICES.

- 5.1. SKU Services listed in the Proposal shall be performed pursuant to these Terms. Service descriptions for SKU Services delivered by PELLERA are available at <https://pellera.com/sku-service-descriptions/>.
- 5.2. SKU Services consisting of Cisco Smart Net Total Care services (as defined in Section 1.9(b) above) shall be performed by Cisco Systems, Inc. as a subcontractor to PELLERA in accordance with the then-current applicable Cisco service description and Services Guide, located at <https://www.cisco.com/c/en/us/about/legal/service-descriptions.html>. Client agrees to comply with the Cisco End User Obligations, located at https://www.cisco.com/c/dam/en_us/about/doing_business/legal/service_descriptions/docs/how-cisco-provides-services.pdf. The products covered by the SKU Services shall be those products listed in the Proposal provided by PELLERA. Product additions and decommissions shall be governed by Cisco's then-current terms and conditions. Cisco Smart Net Total Care contracts are non-cancellable, prepaid maintenance contracts and will be invoiced in full in advance when CLIENT's order is processed unless otherwise specified in the applicable Proposal.
- 5.3. SKU Services identified as "IBM PRIME BIDDER" shall be performed by IBM as a subcontractor to PELLERA in accordance with the Proposal and these Terms. CLIENT agrees to pay for the actual hours used, which may be more (or less) than the estimate provided in the applicable Proposal.
- 5.4. PELLERA warrants that in performing SKU Services, it shall perform in a workmanlike manner in accordance with industry standards. EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, PELLERA MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO THOSE SKU SERVICES PROVIDED HEREUNDER.
- 5.5. WITH RESPECT TO SKU SERVICES PERFORMED HEREUNDER, IN NO EVENT WILL PELLERA BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES, INCLUDING LOSS OF DATA, EVEN IF PELLERA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PELLERA'S LIABILITY FOR PERFORMANCE OF SKU SERVICES HEREUNDER, AND CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS FOR DAMAGES FOR SKU SERVICES, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE FEES PAID TO PELLERA FOR THE SPECIFIC SKU SERVICE GIVING RISE TO THE CLAIM FOR DAMAGES (IF REOCCURRING, TWELVE (12) MONTHS'

CHARGES APPLY). Nothing in this Section 5.5 shall limit or exclude liability that cannot be excluded or limited under applicable law.

- 5.6. CLIENT acknowledges and agrees that SOW Services may be listed in a Proposal. Such SOW Services shall be performed pursuant to mutually agreeable terms and conditions between PELLERA and the CLIENT.
- 5.7. CLIENT warrants and represents that CLIENT shall not provide PELLERA with access to any personal data subject to protection under the General Data Protection Regulation 2016/679 ("GDPR") either for performance of SKU Services or SOW Services. CLIENT acknowledges and agrees that no processing of personal data of European Economic Area data subjects is required for performance of services.

6. PRICES, PAYMENT AND TAXES.

- 6.1. Prices are stated in the Proposal. CLIENT agrees to make payment in full to PELLERA for all amounts due within thirty (30) days from date of invoice. CLIENT also agrees to pay interest on all amounts that become past due. Interest will be charged at one and a half percent (1 ½%) per month or the highest rate allowed by law, whichever is less. If CLIENT should default on any payment(s), PELLERA shall have the right to declare all unpaid fees immediately due and payable. Additionally, CLIENT will be responsible for all collection costs and attorney fees incurred to collect any delinquent amount. CLIENT shall pay all sales and other taxes, however designated, except taxes based upon the income of PELLERA, which are levied or imposed by reason of the transactions contemplated herein. Estimated taxes may be listed in the proposal. Final taxes will be calculated and stated on the invoice to CLIENT. If CLIENT is exempt from tax then CLIENT agrees to provide a valid sales tax exemption certificate prior to issuing a Purchase Order.

7. ADDITIONAL TERMS & CONDITIONS FOR SALES TO FEDERAL GOVERNMENT END USERS.

- 7.1. PURCHASE. All Equipment, SKU Services, or SOW Services purchased by CLIENT shall be for use by a Federal Government End User within the fifty (50) states of the continental United States, the District of Columbia, Guam and Puerto Rico. CLIENT represents and warrants that the purchase of Equipment under these Terms is not for resale to another third party, other than a Federal Government End User.
- 7.2. If this quote is being submitted in support of a Federal Government End User through a third-party integrator, the following applies:
 - A. SUBCONTRACTS FOR COMMERCIAL ITEMS: The Equipment, SKU Services, or SOW Services offered by PELLERA meet the criteria of "Commercial Item" as defined in FAR 2.101. PELLERA acknowledges and accepts the terms and conditions set forth in FAR 52.244-6, Subcontracts for Commercial Items. PELLERA reserves the right to reject or accept supplemental agency, FAR, or DFARS flowdown clauses on a case by case basis.
 - B. With regards to sales of Third Party Products, any supplemental terms or agreements relative to such that are referenced and/or attached to PELLERA's quote must be included with CLIENT's quote to the Federal Government End User.
- 7.3. If this quote is being submitted directly to a Federal Government End User, the following applies:
 - A. CONTRACTS FOR COMMERCIAL ITEMS: The Equipment, SKU Services, or SOW Services offered by PELLERA meet the criteria of "Commercial Item" as defined in FAR 2.101. PELLERA acknowledges and accepts the terms and conditions set forth in FAR 52.212-4, Contract Terms and Conditions Commercial Items. PELLERA reserves the right to reject or accept supplemental agency, FAR, or DFARS flowdown clauses on a case by case basis.

8. TERMS & CONDITIONS FOR SALES OF IBM PRODUCTS TO FEDERAL GOVERNMENT END USERS.

- 8.1. Sales to Federal Government End Users for IBM services, software, software maintenance support, software as a service, hardware, and hardware maintenance ("IBM Products") are subject to the applicable, supplemental IBM terms of service for each. Unless other terms and conditions have been specifically negotiated between IBM and CLIENT, the IBM terms referenced below govern performance of the applicable IBM Products. IBM's Federal Government End User terms are located within IBM's GSA schedule contract and as such, reference to the IBM GSA schedule contract number below is for informational purposes only and does not constitute a GSA transaction. For the purposes of this Section 8, capitalized terms shall have the same meaning as in the IBM federal end user terms and conditions.
 - A. IBM Machine Code License Terms apply to the sale of IBM Hardware and can be viewed at IBM's website <https://www.ibm.com/industries/federal/contracts/gsa-it-schedule-gs-35f-110da>. The terms are located in Chapter 3, section 3.12.5 of the IBM GSA IT Schedule Contract, GS-35F-110DA.
 - B. IBM hardware maintenance terms apply to the sale of IBM hardware maintenance support and are attached hereto as Appendix A and can also be viewed at IBM's website <https://www.ibm.com/industries/federal/contracts/gsa-it-schedule-gs-35f-110da>. The terms are located in Chapter 4, Section 4.9 of the IBM GSA IT Schedule Contract, GS-35F-110DA.
 - C. IBM End User License terms and Software Maintenance terms apply to the sale of IBM software and software Service & Support can be viewed at IBM's website

<https://www.ibm.com/industries/federal/contracts/gsa-it-schedule-gs-35f-110da>. These terms are found in the following Chapters under the IBM GSA IT Schedule Contract, GS-35F-110DA: Chapter 1, General Information; Chapter 5, Software section, IBM Program License Agreement (IPLA) Section 5.15; Appendix S, Passport Advantage; Section 5.16 Software Maintenance zOTC software.

- D. IBM Software as a Service offerings apply to the sale of IBM SaaS and can be viewed at IBM End User License terms and Software Maintenance terms can be viewed at IBM's website <https://www.ibm.com/industries/federal/contracts/gsa-it-schedule-gs-35f-110da>; Appendix T, Cloud Services Agreement. Specific Offering Service Description Document and Supplemental Terms (if applicable) are available at <http://www-03.ibm.com/software/sla/sladb.nsf/sla/usg>.
- E. IBM services terms apply to any and all IBM performed labor services, both SKU and professional. These terms can be viewed at IBM's website <https://www.ibm.com/industries/federal/contracts/gsa-it-schedule-gs-35f-110da>. These terms are found in the following Chapters under the IBM GSA IT Schedule Contract, GS-35F-110DA: Chapter 1, General Information; and Chapter 7, Special Item 54151S Information Technology IT Services.
- F. Any referenced and/or attached IBM terms apply only to the sale of IBM products and services and are hereby incorporated by reference into any resulting order. IBM End User License terms, Software Maintenance terms and conditions, and any supplemental IBM terms and conditions attached to this quote apply in lieu of any others and shall be incorporated by reference into any resulting order.

9. OTHER.

- 9.1. CONFIDENTIAL INFORMATION. CLIENT agrees to treat as strictly secret and confidential and to use only for the purposes of evaluating a Proposal, all Confidential Information supplied by PELLERA. CLIENT shall not disclose any Confidential Information to any person not entitled to receive it. Upon the demand of PELLERA, CLIENT promptly return to PELLERA all Confidential Information furnished to CLIENT, together with all copies or reproductions then in CLIENT's possession or control.
- 9.2. EQUIPMENT WARRANTIES. PELLERA warrants and represents that new Equipment purchased by CLIENT hereunder, if any, is eligible for all warranties and indemnities provided by the applicable manufacturer.
- 9.3. GOVERNING LAW AND VENUE. Exclusive venue for any dispute shall be Leon County, Florida. The applicable law governing these Terms shall be Florida law. THE PARTIES WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY CLAIM, ACTIONS, PROCEEDING, OR COUNTERCLAIM BY EITHER PARTY AGAINST THE OTHER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THESE TERMS.