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## Software License Agreement

### IMPORTANT! PLEASE READ CAREFULLY

By installing, copying, or otherwise accessing or using this Software, and, if applicable to the Software you are installing, you click the "I Agree" button on the initial installation screen, you ("**Licensee**") acknowledge your acceptance of the terms and conditions of the following software license agreement. If you do not agree to all of the terms and conditions stated below do not install, copy, or otherwise access or use the software.

1. **DEFINITIONS.** For purposes of this Agreement, in addition to terms defined herein, the following terms have the following meanings:

**Agreement** - means this Software License Agreement as it is written, and as it may be amended from time to time in accordance with the provisions hereof, specifying the terms and conditions of your license, installation and use of Software and Documentation provided by PESA.

**Confidential Information** - means all data and information relating to the Software, trade secrets and other technology, including any aspects of the business and management of PESA, to which access is obtained or granted to the Licensee; and any materials provided by PESA to the Licensee.

**Documentation** – means the User Guide(s) provided with the Software, or other technical bulletins pertinent to updates, Improvements or use of the Software that may be issued by PESA from time-to-time.

**Extended Maintenance** - means the yearly maintenance fee(s) payable by Licensee to PESA, as determined by PESA, for the support, maintenance and update of the Software, after the expiration of the initial Maintenance Period as set forth in this Agreement.

**Hardware Equipment** - means (a) hardware products sold by PESA to Licensee on which the Software is installed and licensed for use; or (b) in the case of Software licensed on a stand-alone basis, the equipment on which the Licensee intends to install the Software.

**Improvements** - mean all inventions, works, discoveries, improvements and innovations of or in connection with the Software, including error corrections, bug fixes, patches and other updates in Object Code form to the extent made available to Licensee in accordance with PESA's discretionary release schedule.

**License Fee** – means, if applicable, the fee(s), whether one-time or recurring, payable in respect of the Software in accordance with the relevant invoice(s) or applicable changes in connection with this Agreement.

**Maintenance Period** - means the period of time for which PESA will provide the Licensee maintenance on the Software following original purchase as specified in Table 1, below, or any period of time during which the Software is covered by an Extended Maintenance agreement purchased from PESA by the Licensee. The initial Maintenance Period commences on the date of shipment from PESA unless otherwise specified.

**Object Code** - is the machine-readable executable form of a computer software program.

**Party** – may be interpreted as either PESA or Licensee, as the context requires.

**Person** - is interpreted to include (a) a natural person, whether acting in his or her own capacity, or in his or her capacity as executor, administrator, estate trustee, trustee or personal or legal representative; (b) a corporation or a company of any kind, a partnership of any kind, a sole proprietorship, a trust, a joint venture, an association, an unincorporated association, an unincorporated syndicate, an unincorporated organization or any other association, organization or entity of any kind; and (c) a governmental authority.

**Software** - is the version of Object Code licensed and delivered to Licensee by PESA concurrently with delivery of this Agreement, related Confidential Information, and any subsequent Improvements provided to Licensee by PESA pursuant to this Agreement.



**Source Code** - is the human-readable form of a computer software program, including the tools and documentation necessary for a reasonably competent computer programmer to understand or maintain the Software.

**Third Party Software** - means those portions of the Software, if any, which are owned or controlled by organizations other than PESA, and licensed to PESA.

**Table 1 – Initial Software Maintenance Periods**

<b>Product Category</b>	<b>Software Maintenance Period</b>
<b>SDI Router Control</b> Catrax, Catrax J, Software embedded within Hardware Equipment supplied by PESA, unless specifically stated as 1 Year, such as IP Software Applications	3 Yrs
<b>Control Software</b> Catrax Web	1 Yr
<b>IP Software Applications</b> Catrax IP, All software applications, including third party applications, installed on PESA's PERC3000-IP-x hardware or other server devices as required for operation, control and/or configuration of IP routing nodes and/or endpoints; including, but not limited to, RDS Server, Virtual Matrix, etc., unless a specific Maintenance Period is stated for a particular software application.	1 Yr

2. **LICENSE.**

**2.1 Grant.** Subject to the terms and conditions of this Agreement, and payment of the License Fee, if applicable, PESA hereby grants to Licensee a non-transferable and non-exclusive right to use the Software solely for the internal use of Licensee. The Software and Documentation are provided to Licensee for the exclusive use by the Licensee for its ordinary business purposes and shall not be used by any other organization or party for any purposes. Licensee may make copies of the Software as required for internal backup and archival purposes.

**2.2 Copies.** Except for the provision of backup copies granted by section 2.1, Licensee shall not copy any Software provided by PESA, or any part thereof, in any human or machine-readable form, without the prior written consent of PESA.

**2.3 Restrictions.** Under the terms of this License, Licensee shall not:

- Market, distribute, modify, share, sell, or make available to another Person by any means, the Software and/or Documentation, in whole or in part;
- Decompile, reverse-engineer or disassemble the Software; electronically transfer it into another computer language; or permit, help, or encourage others to do so; or
- Use the Software or Documentation in a manner that is inconsistent with the License granted hereunder; or otherwise use the Software in any way that will result in a breach of this Agreement.

3. **DELIVERY.** The Software may be delivered on removable media or electronic transfer for stand-alone installation on Licensee-furnished Hardware Equipment, or may reside in non-volatile memory of PESA hardware devices sold to Licensee. For stand-alone Software, PESA shall deliver to Licensee, at the location designated in the purchase order, a machine-readable copy of the Software program(s), in Object Code form, described in the purchase order submitted by Licensee to PESA. Licensee shall be responsible for installation of the Software on suitable and compatible Hardware Equipment, and such Hardware Equipment must meet the minimum specifications set out in the Software Documentation.



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#### 4. SOFTWARE WARRANTIES.

4.1 PESA represents and warrants that it has the authority to grant the license(s) set forth in this Agreement.

4.2 PESA warrants that the Software, if properly installed and used with Hardware Equipment which meets specifications outlined by PESA, will, during the Maintenance Period, operate substantially in accordance with the applicable specifications set forth in the Documentation and that the related media related to the Software will be free of defects.

4.3 Except as expressly stated herein, no disabling mechanism or protection feature designed to prevent the Software's use, including any computer virus, worm, malicious code or instructions of any type, or any other codes or instructions that may be used to access, delete, damage or disable the Software or any other hardware or computer system, will be used or activated by PESA in respect of Software that is delivered to Licensee.

4.4 To the extent transferrable or assignable, PESA extends to Licensee the benefit of all warranties from third party manufacturers and suppliers, including any warranty relating to Third party Software. PESA shall have no warranty obligations where any Software failure occurs as a result of misuse, neglect, accident, abuse, misapplication, improper installation, unauthorized modification, extreme power surge or extreme electromagnetic field, Third Party Software, or Force Majeure. PESA does not represent or warrant that the Software will meet any or all of Licensee's particular requirements, that the Software will operate error-free or uninterrupted, that all programming errors in the Software can be found in order to be corrected, or that the Software will be compatible with other hardware or systems. All of PESA's obligations with respect to warranty provisions are contingent on Licensee's use of the Software in accordance with the terms and conditions of this Agreement, and PESA's instructions as provided in the Documentation.

4.5 PESA shall use its reasonable efforts to correct, at Licensee's request, any failure of the Software to comply with the foregoing warranties, or, at PESA's option, repair or replace, or issue a credit for the noncompliant copy of the Software.

4.6 THE FOREGOING WARRANTIES ARE IN LIEU OF ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT OR WARRANTIES FOR THIRD-PARTY SOFTWARE. THIS SECTION 4 SETS FORTH THE EXCLUSIVE REMEDIES OF LICENSEE FOR BREACH OF WARRANTY.

5. **MAINTENANCE SUPPORT & CHARGES.** Limited technical support for the Software, including downloadable Software upgrades, is provided by PESA to Licensee at no charge during the Maintenance Period. Technical support by PESA for Software not within the coverage of a Maintenance Period will be charged on an hourly basis at the then current rate published by PESA.

6. **EXTENDED MAINTENANCE.** Licensee shall have the option of purchasing an Extended Maintenance agreement for the Software in one (1) year increments from and after the end of any Maintenance Period at PESA'S Extended Maintenance rates then in effect for such Software. Upon purchase of an Extended Maintenance agreement, the Maintenance Period for the Software shall be deemed to be extended for each such one (1) year increment and the terms and conditions of this Agreement in effect at the time of such extension shall remain in full force and effect for such Extended Maintenance period.

7. **OWNERSHIP.** No proprietary interest or title in or to the intellectual property associated with the Software is transferred from PESA to Licensee by this Agreement. Licensee acknowledges and agrees that PESA shall be the owner of all intellectual property rights in the Software and all related Documentation and Improvements. Licensee further acknowledges and agrees that logos, trademarks, or trade names appearing on or in connection with the Software, whether registered or unregistered, shall remain the intellectual property of PESA. PESA reserves all rights not expressly licensed to Licensee under section 2 of this Agreement.



**8. IMPROVEMENTS.** Licensee may request PESA to incorporate features, or Improvements into the Software. At its sole discretion, PESA may undertake to incorporate and provide to Licensee such features or Improvements with or without payment of a fee to be negotiated at the time of such request. Notwithstanding the foregoing, PESA shall be under no legal obligation to create or release Software Improvements at any time or in accordance with a fixed schedule. Any and all features or Improvements included in the Software shall be considered the sole property of PESA and shall be used by Licensee pursuant to the terms of the License granted under this Agreement.

**9. CONFIDENTIALITY.**

**9.1** Licensee acknowledges that the Software and Documentation contain both proprietary and confidential property of PESA and shall be considered “Confidential Information”. Confidential Information shall include operation or communication protocols used by the Software in order to solve problems or help with an installation or equipment interface. Confidential Information shall not include any information which was in the public domain prior to disclosure thereof to Licensee by PESA or which becomes part of the public domain through no fault of, or negligent or unauthorized act or omission of, Licensee, or any third party. PESA may, from time to time and its sole discretion, furnish Licensee with additional Confidential Information in connection with the Software. Licensee shall protect such Confidential Information of PESA to the same degree it protects its own Confidential Information, but with no less than a reasonable degree of care. Licensee shall not disclose Confidential Information to any party other than to those employees who need to know such information to carry out their duties. Licensee shall use the Confidential Information only in connection with its licensed use of the Software hereunder.

**9.2** Pursuant to legal, judicial, or administrative proceedings, either party may disclose certain Confidential Information of the other if it is expressly required by law to do so, provided that the Party disclosing such Confidential Information: (a) provides the other Party with reasonable written notice prior to such disclosure; (b) seeks confidential treatment for such Confidential Information; (c) discloses such Confidential Information only to the extent expressly required by law or under the applicable court order; and (d) complies with any applicable protective or equivalent order.

**9.3** Licensee agrees not to alter or remove any copyright or proprietary logos, notices, or markings affixed by PESA to the Software or the Documentation.

**9.4** Licensee agrees that the Software and Documentation, in whole or in part, shall be used solely for internal business purposes and shall not be distributed or delivered to any third party, nor shall it be used in any fashion to derive, develop, market or distribute any competing product or documentation. Any Source Code which is part of the Software or the Documentation shall not be re-distributed or delivered to any third party, except where required by law.

**10. LIMITATION OF LIABILITY.**

**10.1** TO THE FULLEST EXTENT ALLOWED BY LAW, IN NO EVENT SHALL PESA, BE LIABLE TO LICENSEE, OR ANY OTHER PERSON OR ENTITY CLAIMING THROUGH LICENSEE FOR ANY LIABILITY OR CLAIM FOR LOSS OF PROFITS, INCOME, SAVINGS, LOSS OF USE, OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, DIRECT OR INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT, WARRANTY, OR OTHERWISE, EVEN IF PESA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS SHALL APPLY REGARDLESS OF THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**10.2** Under no circumstances shall PESA’s liability to Licensee, or any other person or entity claiming through Licensee, exceed, in aggregate, the financial amount actually paid by Licensee to PESA for the Software. Notwithstanding any applicable statute of limitations, any claim arising from or related to this Agreement shall be brought by the Licensee within 24 months of the accrual of such claim, or shall be deemed waived and released.



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## **11. INDEMNIFICATION.**

**11.1** PESA shall indemnify and hold harmless Licensee against any damages or costs finally adjudicated by a court or administrative body of competent jurisdiction, arising from any infringement or alleged infringement by the Software or Documentation of any United States patent, copyright, or trade secret of any third party, and any settlements relating thereto, provided that: (a) the Software or Documentation has been used within its intended purposes and in accordance with the terms of this Agreement; and (b) Licensee promptly informs PESA of the facts thereof and furnishes PESA with a copy of each communication, notice or other action relating to the alleged infringement; and (c) provides to PESA all authority, information and assistance necessary to settle, compromise or litigate such suit or proceeding. PESA shall not be liable hereunder for any costs or expenses incurred by Licensee without PESA's prior written consent.

**11.2** In the event the Software or any portion thereof becomes, or in PESA's determination is likely to become, the subject of a claim or infringement of any United States patent, copyright, or trade secret of any third party which, in its sole discretion, PESA does not consider to be affordably remediable, and notwithstanding the above, PESA reserves the right to terminate this Agreement and the License granted hereunder on immediate notice to Licensee.

**11.3** The foregoing provisions notwithstanding, PESA shall not have any liability under this section to the extent that any infringement or claim thereof results from: (a) modifications of the Software, where the Software, if not modified, would not be infringing; or (b) use of other than a current release of the Software if such infringement would have been avoided by the use of a current release, provided that such current release performs substantially in conformance with the specifications set out in the Documentation; and that the Software or Documentation was made available to Licensee at no additional cost by PESA for Software covered by an active Maintenance Period.

**11.4** In the event that it is finally determined by a court of competent jurisdiction (or in a final settlement agreement consented to by PESA) that the Software infringes a United States patent, copyright, or trademark Licensee's sole and exclusive remedy shall be that PESA will, in its discretion: (a) obtain the right to use the infringing element of the Software or Documentation; or (b) replace the infringing Software product with a non-infringing, functionally-compatible product. The foregoing states the entire obligation of PESA with respect to the infringement of any intellectual property rights.

## **12. TERM AND TERMINATION.**

**12.1** The term of this Agreement shall commence on the date of shipment of the Software from PESA, unless otherwise specified, and, unless terminated earlier in accordance with the terms of this Agreement, shall continue until: (a) in the case of Software licensed on a stand-alone basis, the date on which Licensee uninstalls or no longer uses the Software; or (b) in the case of Software embedded within Hardware Equipment provided by PESA, the earliest of the end of the life of the Hardware Equipment, or, if the Hardware Equipment is assigned or transferred in accordance with this Agreement, the date on which the Hardware Equipment is no longer owned by Licensee.

**12.2** PESA shall have the right to terminate this Agreement if Licensee fails to pay any fees or other amounts when due hereunder or under any other agreement between the Licensee and PESA (or any affiliates of the Licensee, as applicable) in connection with the Software and/or Hardware Equipment and such breach is not cured within thirty (30) days after written notice of such failure to pay is given to Licensee by PESA.

**12.3** PESA shall have the right to terminate this Agreement if Licensee fails to perform any of the material obligations set forth in this Agreement and such default, in the case of a default which is remediable, continues for a period of thirty (30) days after written notice of such failure has been given by PESA or, in the case of a non-remediable default, immediately upon notice.

**12.4** PESA may terminate this Agreement if Licensee is in breach of any of sections 2 or 9 of this Agreement. In such instances PESA shall provide written notice of such termination as soon as practicable. However, written notice shall not be a prerequisite to such termination.



**12.5** In the event of a change of control of Licensee, PESA shall have the right to terminate this Agreement and the License granted hereunder upon thirty (30) days' prior written notice to Licensee. PESA's right to terminate in the event of a change of control of Licensee shall continue for a period of six (6) months from the date Licensee delivers notice of such change of control to PESA.

**12.6** Within seven (7) days of any termination of this Agreement, Licensee shall: (a) discontinue the use of, and return to PESA, all copies of the Software; (b) delete such Software from any computer; (c) return all copies of any Confidential Information pertaining to PESA which may be in Licensee's possession; and (d) pay all amounts owing to PESA. The Licensee's obligations under this Agreement shall survive termination for any reason.

- 13. SURVIVAL.** The provisions of sections 1, 2, 4, 7, 8, 9, 10, 11, 12, 13, 16, 17, 19 and 20 of this Agreement shall survive the expiration or termination of this Agreement.
- 14. FORCE MAJEURE.** PESA shall be free of liability to the Licensee if prevented from executing its obligations under this Agreement in whole or in part due to Force Majeure, such as tornado, earthquake, flood, fire, war or any other unforeseen or uncontrollable event. Dates and times by which PESA is required to render performance under this Agreement shall be automatically postponed to the extent and for the period that it is prevented from meeting them by reason of events of force majeure or any cause beyond its reasonable control provided PESA notifies Licensee of the commencement and nature of such cause and uses its reasonable efforts to render performance in a timely manner.
- 15. ASSIGNMENT.** This Agreement shall inure to the benefit of and be binding upon the successors and assigns of PESA and Licensee; provided, however, that Licensee may not sublicense or assign this Agreement or any of its rights, duties or obligations hereunder, by operation of law or otherwise, without the prior written consent of PESA. PESA may assign this Agreement, or any of its rights or obligations hereunder, in whole or in part, upon notice to Licensee.
- 16. GOVERNING LAW.** This Agreement shall be governed and interpreted by the laws of the State of Alabama, excluding its choice of law provisions. The courts having jurisdiction in Madison County, Alabama shall be the exclusive venue and jurisdiction for the resolution of any disputes related to or arising from this Agreement. Both parties hereby consent to such personal and exclusive jurisdiction.
- 17. EXPORT AND IMPORT LAWS.** Licensee acknowledges and agrees that the Software (including any technical data and related technology) are subject to U.S. export controls under the Export Administration Regulations (the "EAR") or the International Traffic in Arms Regulations (the "ITAR") and may be subject to export, re-export or import regulations in other countries. Licensee agrees to strictly comply with all such laws and regulations, and will not export or re-export the software and technical information, directly or indirectly, to: (1) any countries that are subject to US export restrictions; (2) any end user who Licensee knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems; or (3) any end user who has been prohibited from participating in US export transactions by any federal agency of the US government.
- 18. WAIVER.** The terms of this Agreement may be waived only in writing and no failure or delay in enforcing rights hereunder shall be construed as a waiver. The waiver by either of the parties hereto of any breach of any provision hereof by the other party shall not be construed to be either a waiver of any succeeding breach of any such provision or a waiver of the provision itself.
- 19. SEVERABILITY.** The provisions of this Agreement shall be severable, and if any provisions of this Agreement, shall be held or declared to be illegal, invalid, or unenforceable, such illegality invalidity, or unenforceability, in whole or in part, shall not affect any other provision hereof.
- 20. ENTIRE AGREEMENT.** This Agreement contains the entire agreement between PESA and the Licensee relating to the subject matter of this Agreement and supersedes any previous understandings or agreements, whether written or oral, in respect of such subject matter.

*Revised January 2020*