

## End User License Agreement (EULA)

THIS EULA SETS OUT THE BASIS ON WHICH PESA INC MAKES THE PRODUCTS AVAILABLE TO YOU AND ON WHICH YOU MAY USE THEM.

THE LICENSED SOFTWARE IS PROTECTED BY COPYRIGHT LAWS AND TREATIES. READ THE TERMS OF THE FOLLOWING END USER (SOFTWARE) LICENSE AGREEMENT ("AGREEMENT") CAREFULLY BEFORE ACCESSING THE LICENSED SOFTWARE. BY ACCESSING THE LICENSED SOFTWARE, YOU CONFIRM YOUR ACCEPTANCE OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS, PESA INC. IS UNWILLING TO LICENSE THE LICENSED SOFTWARE TO YOU AND YOU ARE NOT AUTHORIZED TO ACCESS THE LICENSED SOFTWARE.

### 1. DEFINITIONS

- 1.1 **Entitlement.** The collective set of applicable agreements and documents authorized by Pesa Inc., ("Pesa") evidencing your obligation to pay associated fees (if any) for the license, associated Services, and the authorized scope of use of Licensed Software under this Agreement.
- 1.2 **You (or Your).** The individual or legal entity specified in the Entitlement, or for evaluation purposes, the entity performing the evaluation.
- 1.3 **License Fee.** License Fee shall mean the consideration paid to Pesa, for use of the Licensed Software. The License Fee is part of the price paid for the relevant Licensed Software. The license is subject to the payment of all applicable fees, costs, and expenses.
- 1.4 **Licensed Software.** Licensed Software shall mean the executable version of Pesa's computer software, programs or code, in object code format (specifically excluding source code), together with any related material including, but not limited to the Reference Manuals or database schemas provided for use in connection with the Licensed Software and including, without limitation, all Updates and Upgrades.
- 1.5 **Term License Agreement.** The Term License Agreement ("EUTLA") is a type of license for the Software where Pesa provides the Licensee the latest software release at time of initial delivery including ongoing updates and upgrades for as long as the licensee pays the term license fee, which is an annual fee.
- 1.6 **Standard License Agreement.** The Standard License Agreement ("EUSLA") is a type of license for the Software where Pesa Inc provides the Licensee with a license to use the latest software release at time of initial delivery for a one time license fee. There is an annual maintenance fee for any software update and support. See 1.11 and 1.12.
- 1.7 **Commencement.** The effective date of the license is the shipping date.
- 1.8 **Warranty.** The assurance the software will operate substantially in accordance with the operating and reference manuals at time of delivery for a period of one year. See Section 4.1 and 4.2
- 1.9 **Duration.** The Standard License is a perpetual license for use of the software version at time of delivery. The Term License covers the time identified by the paid period which renews annually. If Term License is not renewed, the EUTLA expires as per Section 3.3

- 1.10 Reference Manuals. Reference Manuals shall mean the most current version of the documentation for use in connection with the Licensed Software provided by Pesa to You.
- 1.11 Software Updates. Updates shall mean any periodic software releases, additions, fixes, and enhancements thereto, release notes for the Licensed Software and related Reference Manuals, (other than those defined elsewhere in this section as Upgrades) which have no value apart from their operation as part of the Licensed Software and which add minor new functions to the Licensed Software, but none so significant as to warrant classification as an Upgrade, which may be provided by Pesa to fix critical or non-critical problems in the Licensed Software on a scheduled, general release basis. Updates to the Licensed Software ("Version") are denoted by number changes to the right of the decimal point for a version and revision number (for example going from 4.0.0 to 4.1.2). A maintenance plan is required for any Updates for a Standard License. Updates are included in the Term License. The warranty does not include software updates.
- 1.12 Software Upgrades. Upgrades shall mean any modification to the Licensed Software made by Pesa, which are so significant, in Pesa's sole discretion, as to warrant their exclusion under the current Standard License grant under this Agreement for the Licensed Software unless an upgrade fee, as determined by Pesa, is fully paid. Upgrades of Licensed Software are denoted by number changes to the left of the decimal point for a release number (for example going from 3.0 to 4.0).
- 1.13 Security Patch Releases. Pesa will use commercially reasonable efforts to assess and if deemed as warranted, to address security vulnerabilities found in the Licensed Software. Pesa will review the vulnerabilities found and shared from time to time through the NIST's National Vulnerability Database ("NVD"). Security patches will be deployed at the reasonable discretion of Pesa as refined for the Licensed Software, and may not be issued for all vulnerabilities, except if they are classified as critical or high. Patch releases are included with a Term license or a Standard License with maintenance plan.

## 2. RIGHTS GRANTED, RESTRICTIONS AND SUPPORT

### 2.1 License to Use.

Subject to the terms and conditions set forth herein and subject to the terms of your Entitlement, Pesa hereby grants to You a non-exclusive, limited and nontransferable right and license to use the Licensed Software in accordance with the terms of this Agreement. This license is granted to You and not, by implication or otherwise, to any parent, subsidiary or affiliate of Yours without Pesa's specific prior written consent. This license is for the limited use of the Licensed Software by You for the purpose of accessing the Licensed Software. Except as explicitly provided in this Agreement, this Agreement does not grant to You the right to use any Licensed Software for other purposes. The license and rights granted to You in this Section (2) do not include the right to sublicense to distributors, resellers and other third parties any of the rights granted to You in this Section (2). All rights not expressly granted You in this Agreement are reserved to Pesa and no implied license results from this Agreement.

### 2.2 Restrictions.

- (a) Reproduction. You shall not copy, distribute, reproduce, use or allow access to any of the Licensed Software, except as explicitly permitted under this Agreement. You shall not modify, adapt, translate, export, prepare derivative works from, decompile, reverse engineer, disassemble or otherwise attempt to derive source code from the Licensed Software or any internal data files generated

by the Licensed Software. Use of the Licensed Software installed in any third party software application requires Pesa's knowledge and pre-approval. You shall also not use the Licensed Software in an attempt to, or in conjunction with, any device, program or service designed to circumvent technological measures employed to control access to, or the rights in other work protected by copyright laws. You shall not remove, modify, replace or obscure Pesa's copyright and patent notices, trademarks or other proprietary rights notices affixed to or contained within any Licensed Software. No right is granted hereunder for any third party who obtains access to any Licensed Software through You to use the Licensed Software to perform services for third parties.

- (b) Ownership. The Licensed Software is conditionally licensed and not sold. As between the parties, Pesa and/or its licensors owns and shall retain all right, title and interest in and to all of the Licensed Software, including all copyrights, patents, trade secret rights, trademarks and other intellectual property rights therein, and nothing in this Agreement shall be deemed to transfer to You any ownership or title to the Licensed Software. All Pesa technical data and computer software is commercial in nature and developed solely at private expense.

### 3. TERM AND TERMINATION

- 3.1 Term. The license and service term are set forth in your Entitlement(s).
- 3.2 Termination for Breach. Your rights under this Agreement will terminate immediately without notice from Pesa if You materially breach it or take any action in derogation of Pesa's rights to the Licensed Software. Pesa may terminate this Agreement should any Software become, or in Pesa's reasonable opinion likely to become, the subject of a claim of intellectual property infringement or trade secret misappropriation.
- 3.3 Termination; Effect; Survival. Upon the termination of this Agreement for any reason: (a) all license rights granted hereunder shall terminate; (b) You shall immediately pay to Pesa all amounts due and outstanding as of the date of such termination or expiration; and (c) You shall return to Pesa all Licensed Software and all Pesa Confidential Information not otherwise required under the terms of this Agreement or certify to the satisfaction of Pesa that all such Licensed Software and Confidential Information have been destroyed. Notwithstanding any termination of this Agreement, the following provisions of this Agreement shall survive and for the relevant period of time set forth therein, if any: 4, 5, and 7.

### 4. REPRESENTATIONS, DISCLAIMER AND LIMITATION OF LIABILITY

- 4.1 Pesa Warranty.
  - (a) Pesa warrants that the Licensed Software will operate substantially in accordance with the Reference Manuals written at time of delivery provided for a term of one (1) year (the "Warranty Period") after its delivery date. As Your sole and exclusive remedy for any breach of this warranty, Pesa will use its commercially reasonable efforts to correct any failure of the Licensed Software to operate substantially in accordance with the Reference Manuals at time of delivery which is not the result of any improper or unauthorized operation of the License Software and that is timely reported by You to Pesa in writing within the Warranty Period, provided that in lieu of initiating commercially reasonable efforts to correct any such breach, Pesa may, in its absolute discretion replace the Licensed Software with other software or technology which substantially conforms to the Reference Manuals , whereupon this Agreement shall terminate.

This warranty shall immediately terminate if You or any third party makes or attempts to make any modification of any kind whatsoever to the Licensed Software. This warranty explicitly does not cover any updates or upgrades beyond efforts to correct any failure to operate substantially in accordance with the Reference Manuals at time of delivery. For further clarification for example, if there is a 3<sup>rd</sup> party server operating system upgrade post delivery (ex. Redhat, Ubuntu) within the warranty period that requires a Pesa Software update, it is not included in the warranty, but rather under the Maintenance Plan.

- (b) All proprietary Hardware, if any, will be subject to the then current warranty terms of Pesa Inc. All non-proprietary Hardware, if any, is sold "AS IS"; however, to the extent that Pesa Inc. has the legal right to do so, Pesa Inc. hereby transfers to You, any and all warranties made by Pesa's vendors to Pesa with respect to such non-proprietary Hardware which was sold by Pesa or the Reseller to You, and agree that Pesa disclaims any and all liability in connection with any such non-proprietary Hardware, as set forth in Section 4.2 (b) of this Agreement.

#### 4.2 Warranty Disclaimers.

- (a) THE EXPRESS WARRANTIES SET FORTH IN SECTION 4.1 ABOVE IN RESPECT OF THE LICENSED SOFTWARE ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR STATUTORY, REGARDING THE LICENSED SOFTWARE, OR ITS OPERATION, FUNCTIONALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS (ALL OF WHICH ARE DISCLAIMED). PESA INC. DOES NOT WARRANT THAT ANY OF THE LICENSED SOFTWARE WILL MEET ALL OF YOUR NEEDS OR REQUIREMENTS, OR THAT THE USE OF ANY OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ALL ERRORS WILL BE DETECTED OR CORRECTED.
- (b) THE EXPRESS WARRANTIES SET FORTH IN PESA'S WARRANTY TERMS IN RESPECT OF PESA INC. PROPRIETARY HARDWARE ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR STATUTORY, REGARDING ANY SUCH PROPRIETARY HARDWARE, OR ITS OPERATION, FUNCTIONALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ALL NON-PROPRIETARY HARDWARE SOLD BY PESA OR THE RESELLER TO YOU IS SOLD "AS IS" EXCEPT FOR PESA'S AGREEMENT TO TRANSFER TO YOU ANY WARRANTY GIVEN TO IT BY ANY VENDOR FROM WHOM SUCH HARDWARE WAS PURCHASED FOR RESALE TO YOU HEREUNDER IN ACCORDANCE WITH THE PROVISIONS OF SECTION 4.1 (b), AND PESA DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, OR STATUTORY, REGARDING ANY SUCH NON-PROPRIETARY HARDWARE, OR ITS OPERATION, FUNCTIONALITY, PERFORMANCE, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

- 4.3 Liability Limitation. IN NO EVENT SHALL PESA OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, SHAREHOLDERS OF PESA, NOR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE LICENSED SOFTWARE, BE LIABLE TO YOU, YOUR CUSTOMERS OR TO ANY OTHER THIRD PARTY FOR CONSEQUENTIAL,

INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, LOST PROFITS, LOSS OF USE, INTERRUPTION OF BUSINESS OR FOR LOST OR CORRUPTED DATA ARISING FROM ANY CLAIM OR ACTION HEREUNDER, BASED ON CONTRACT, TORT OR ANY OTHER LEGAL THEORY AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PESA INC. SHALL NOT BE LIABLE FOR DAMAGES FOR ANY CAUSE WHATSOEVER IN AN AMOUNT IN EXCESS OF THE FEE PAID TO PESA INC. BY YOU FOR THE RELEVANT LICENSED SOFTWARE.

## 5. INDEMNIFICATION

### 5.1 Indemnification by Pesa

- (a) Pesa shall indemnify and hold You harmless against any and all actions, claims, losses, damages, liabilities, awards, costs and expenses (including reasonable attorneys' fees) ("Claims") arising out of any violation of any third person's US and copyright, trademark, patent rights or trade secrets, proprietary information on account of Your use of the Licensed Software when used in accordance with the terms of this Agreement. You shall promptly notify Pesa in writing of any such Claim and promptly tender the control of the defense and settlement of any such Claim to Pesa. Pesa shall thereafter undertake the defense of any such Claim using counsel of its choice. You shall cooperate with Pesa, in defending or settling such Claim at the expense of Pesa; provided that Pesa shall not settle any Claim against You which would require the payment of money by You without the prior written consent of You, which consent shall not be unreasonably withheld. You shall have the right to consult and provide input into the defense with counsel of its choice at its own expense. Pesa shall not reimburse You for any expenses incurred by You without the prior written approval of Pesa, which approval shall not be unreasonably withheld.
- (b) If any Licensed Software is, or in the opinion of Pesa may become, the subject of any Claim for infringement, then Pesa may, or if it is adjudicatively determined that any of the Licensed Software infringes in the manner described above (except to the extent that any translation, modification, addition or deletion or combination by You is the sole source of such Claim), then Pesa shall, at its option, either (i) procure for You the right to continue use of the Licensed Software for the term hereof, (ii) replace or modify the Licensed Software with other suitable and reasonably equivalent products so that the Licensed Software becomes non-infringing, or (iii) terminate this Agreement and refund to You a portion of the fee paid for the relevant Licensed Software.
- (c) Pesa shall have no liability for: (i) the use of other than the then current release of the Licensed Software; (ii) the use of the Licensed Software other than as set forth in its accompanying documentation and as permitted herein; (iii) the modification of any of the Licensed Software by any party other than Pesa; or (iv) any infringement arising from the use of any Licensed Software by You after Pesa has issued a written notice to You requiring You to cease using such Licensed Software when Pesa exercises its option to terminate the License pursuant to Section 3.2 (collectively, "Exclusions"). SECTION 5.1 STATES PESA'S EXCLUSIVE OBLIGATION WITH RESPECT TO ANY CLAIM REGARDING THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD-PARTY.

- 5.2 Indemnification by You. You shall indemnify and hold Pesa harmless against any and all Claims directly or indirectly arising out of, or in any manner whatsoever associated or connected with Your performance, purported performance or non-performance of its rights and obligations under this Agreement, and against any and

all Claims incurred by or on behalf of any of the foregoing in the investigation or defense of any and all such Claims.

## 6. CHANGES AND MODIFICATIONS

- 6.1 Pesa reserves the right, in its sole and absolute discretion, to revise, update, change, modify, add to, supplement, or delete certain terms of this EULA for security, legal, best practice or regulatory reasons. Such changes will be effective with or as applicable, without prior notice to You. You can review the most current version of this EULA by clicking on the “EULA” link located on <https://www.pesa.com>. You are responsible for checking this EULA periodically for changes. If any future changes to this EULA are unacceptable to You or cause You to no longer to be in agreement or compliance with this EULA, You may terminate this EULA in accordance with Section 3 and must immediately uninstall the Product and destroy all copies of the Product. Your continued use of the Product following any revision to this EULA constitutes Your complete and irrevocable acceptance of any and all such changes.

## 7. OTHER PROVISIONS

- 7.1 Export and Other Restrictions. This Agreement, and all Your rights and Your obligations under this Agreement, are subject to all applicable U.S. Government laws and regulations relating to exports including, but not limited to, the U.S. Department of Commerce Export Administration Act and its associated Regulations and all administrative acts of the U.S. Government thereunder. In the event the Licensed Software is exported from the United States or re-exported from a foreign destination, You shall ensure that the distribution and export/re-export of the Licensed Software is in compliance with all laws, regulations, orders, or other restrictions of the U.S. Export Administration Act and its associated Regulations. You agree that neither you nor any of your Affiliates will export/re-export any Licensed Software, any hardware on which the Licensed Software is loaded or embedded, technical data, process, or service, directly or indirectly, to any country for which the United States government (or any agency thereof) requires an export license, other governmental approval, or letter of assurance, without first obtaining such license, approval or letter.
- 7.2 Content. Your data and/or your use of the Licensed Software may not: (i) interfere in any manner with the functionality or proper working of the Licensed Software; (ii) stream any material that is copyrighted, protected by trade secret or otherwise subject to third party proprietary rights, including privacy and publicity rights, unless You are the owner of such rights or have permissions from the rightful owner to post the material; (iii) constitute, promote, facilitate or permit any illegal activities, including without limitation, activities that might be libelous or defamatory, invasive of privacy or publicity rights, abusive or otherwise malicious or harmful to any person or entity; (iv) distribute, share or facilitate unauthorized data, malware, viruses, Trojan horses, spyware, worms or other malicious or harmful distributions; or (v) otherwise violate, misappropriate or infringe the intellectual property, privacy, publicity, contractual or other proprietary rights of any third party.
- 7.3 Transfer and Assignment. Pesa may assign, sublicense, or transfer this Agreement and/or any or all of its rights or obligations hereunder. You may not assign, transfer or delegate any of its rights or obligations hereunder (whether by operation of law or otherwise) without the prior written consent of Pesa. For purposes of the preceding sentence, and without limiting its generality, any merger, consolidation,

or reorganization involving You (regardless of whether You are a surviving or disappearing entity) will be deemed to be a transfer of rights, obligations or performance under this Agreement for which Pesa's prior written consent is not required. Any unauthorized assignment, transfer or delegation by You shall be null and void. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.

- 7.4 Waiver and Amendment. No failure or delay by either party in exercising any right, power or remedy under this Agreement, except as specifically provided herein, shall operate as a waiver of any such right, power or remedy. Without limiting the foregoing, any additional legal terms and conditions submitted by You in any other documents, including but not limited to the Entitlement, shall be of no legal force or effect.
- 7.5 Enforcement by Third Party. For any Licensed Software licensed by Pesa from other suppliers, the applicable supplier is a third-party beneficiary of this Agreement with the right to enforce directly the obligations set forth in this Agreement against You.
- 7.6 Third Party Content. Pesa is not responsible for examining or evaluating the data, accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality or any other aspect of any third-party content. Pesa does not warrant or endorse and does not assume and will not have any liability or responsibility to You or any other person for any third-party content. You agree that any third-party content may contain proprietary information and material that is protected by applicable intellectual property and other laws, including but not limited to copyright, and that you will not use such proprietary content, information or materials in any way whatsoever except for permitted uses of the third party content.
- 7.7 Third Party Royalties. Your further reuse, retransmission, rebroadcast, display or other distribution of your third-party content accessing the Licensed Software may require that you obtain a license from and / or pay royalties to the owners of certain third party audio and video formats. You are solely responsible for obtaining such licenses and paying such royalties.
- 7.8 Third Party License and Maintenance. Your use of third party software is subject to licensing and maintenance plans undertaken directly between you and the supplier. Pesa does not warrant or assume any liability or responsibility to You or any other person for any third-party license or maintenance.
- 7.9 Governing Law/Submission to Jurisdiction. This Agreement and any dispute arising or related to this Agreement shall be governed by and construed in accordance with the laws of the state of Alabama, USA (excluding any conflict of laws rule or principle, foreign or domestic), exclusive of the U.N. Convention on the International Sale of Goods. You hereby consent to the jurisdiction of any federal or state court located within the state of Alabama for resolution of any such dispute and waive any objection which You may have based on improper venue or forum non conveniens to the conduct of any proceeding in any such court.
- 7.10 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect.
- 7.11 Force Majeure. Neither party shall be liable to the other party for any failure or delay in performance to the extent that such delay or failure is caused by fire, flood, explosion, war, terrorism, embargo, government requirement, labor problems,

export controls, failure of utilities, civil or military authority, act of God, act or omission of carriers or other similar causes beyond its control. If any such event of force majeure occurs, the party delayed or unable to perform shall give immediate notice to the other party, and the party affected by the other's delay or inability to perform may elect, at its sole discretion, to terminate this Agreement or resume performance once the condition ceases, with an option in the affected party to extend the period of this Agreement up to the length of time the condition endured. Unless written notice is given within 30 calendar days after the affected party is notified of the condition, the latter option shall be deemed selected. During an event of force majeure, the affected party shall exercise reasonable effort to mitigate the effect of the event of force majeure.

- 7.12 Entire Agreement. This Agreement and the license to the Licensed Software granted hereby are also subject to Pesa's standard terms and conditions which are located at <https://www.pesa.com> (as updated from time to time, the "Terms"). This Agreement, together with the Entitlement, Terms and all other documents that are incorporated by reference herein, constitutes the sole and entire agreement between Pesa and You with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to such subject matter.
- 7.13 Headings Not Controlling. The headings used in this Agreement are for reference purposes only and shall not be deemed a part of this Agreement.
- 7.14 US Government Rights. Some Licensed Software is commercial computer software, as such, term is defined in 48 C.F.R. 2.101. Accordingly, if You, as the Licensee, is the US Government or any contractor therefor, You shall receive only those rights with respect to the Licensed Software and Reference Materials as are granted to all other end users under license, in accordance with: 48 C.F.R. 227.7201 through 48 C.F.R. 227.7204, with respect to the Department of Defense and their contractors; or 48 C.F.R. 12.212, with respect to all other US Government licensees and their contractors.
- 7.15 Notices. Any notice required or permitted to be given under this agreement will be in writing and addressed to the parties at the addresses set forth on any written agreement referencing this agreement and terms or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), electronic transmission (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this agreement, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Article.
- 7.16 Questions. If you have questions, please contact Pesa Inc., 103 Quality Circle, Suite 210 Huntsville, AL, 35806.