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15. Limitation of overall Fastman liability

15.1. Notwithstanding any provision in this EULA, any and all breaches by Fastman of this EULA (including fundamental breach), the termination by Fastman of this EULA, and/or any obligation that Fastman may have in contract, tort, equity, at law, and/or otherwise, in no event shall Fastman be liable or obligated to licensee, to any user of the software, and/or to any other party or parties for: (a) any indirect, incidental, special, consequential, aggravated, exemplary, and/or punitive damages; nor (b) any lost sales, lost revenue, lost profits, lost data, or re-procurement amount; howsoever arising, even if Fastman has been advised of the possibility of such damages and/or losses arising and notwithstanding the failure of essential purpose of any remedy contained herein.

15.2. Except for direct damage claims asserted by licensee against Fastman for breach of any of Fastman's obligations under section 13 and/or 14 above, Fastman shall not be liable to licensee, to any user of the software, and/or to any other party or parties, for any direct damages, compensatory damages, and/or other damages of any kind, nor for any losses, expenses, liabilities, and/or other amounts, arising out of and/or related in any way to this EULA, including without limitation, those arising out of: (a) the delivery, installation, use, and/or performance of the media and/or software; and/or (b) any error, defect, inadequacy, omission, non-performance, and/or malfunction in any and/or all of the media and/or software; and/or (c) any and all breaches by Fastman (including fundamental breach) of this EULA, whether such liability is based in contract, tort, equity, at law, and/or on any other theory of liability, howsoever arising, and notwithstanding the failure of essential purpose of any remedy contained herein.

15.3. Notwithstanding section 15 item 15.2 above and/or any other provision of this EULA, Fastman's total, cumulative, and aggregate liability to licensee: (a) arising under the provisions of this EULA; (b) for any and all breaches by Fastman of this EULA (including fundamental breach) and/or the failure of essential purpose of any remedy contained herein; (c) for any termination by Fastman of this EULA; and/or (d) for any other act, omission, or event related in any way to this EULA; shall not exceed the total amount of license fees received by Fastman from licensee under this EULA, whether Fastman's liability is based in contract, tort, equity, at law, and/or upon any other theory of liability, howsoever arising. Licensee agrees that Fastman would not have entered into this EULA without this section 15 being included herein.

16. Term and Termination

16.1. **Term.** The term of this EULA ("Term") shall begin on the Effective Date and shall continue in full force until terminated pursuant to this Section 16.

16.2. **Termination for Default.** Fastman may terminate this EULA for default if Licensee: (a) becomes insolvent; (b) files any proceeding in bankruptcy or acquires the status of a bankrupt; (c) has a receiver or receiver manager appointed with respect to it or any of its assets; (d) seeks the benefit of any statute providing protection from creditors. Fastman may also terminate this EULA for default if Licensee breaches any provision of this EULA provided: (i) Fastman provides Licensee with written notice of breach and a ten (10) day period within which to cure such breach ("Cure Period"); and (ii) Licensee fails to cure each such breach by the expiry of the Cure Period. Any termination of this EULA shall be without prejudice to each right and/or remedy which Fastman may possess against Licensee under this EULA, at law, in equity, and/or otherwise.

16.3. **Effect of Termination.** Upon any termination of this EULA: (a) all licenses granted by Fastman herein shall immediately terminate; and (b) Licensee shall immediately cease all use of the Software and return all of the Software (including all copies thereof made by, or for, Licensee) to Fastman. Sections 1, 2 item 2.1, 9 and 10, together with Sections 12 through 18 inclusive, of this EULA shall survive any expiry or termination of this EULA and shall continue in full force.

16.4. **Subscription License.** This EULA will automatically terminate for Software licensed as Subscription Software on the end date documented in Fastman's Offer and Licensees related Purchase Order. For clarity, no use of the Software is permitted after the termination of this EULA under a Subscription License.

17. Miscellaneous Provisions

17.1. **Confidentiality.** Licensee shall: (a) receive and maintain the Software in confidence; (b) use the same degree of care with respect to the Software as Licensee employs to protect Licensee's own confidential and/or trade secret information from unauthorised use, duplication and/or disclosure, being, in any event, a high degree of care; and (c) use, duplicate, and disclose the Software solely in accordance with the provisions of this EULA. In addition, in the event that Fastman discloses technical specifications which relate to the Software (including but not limited to Schema Documentation or other documents that detail the structure and design of the Software) ("Technical Specs"), Licensee shall: (a) receive and maintain the Technical Specs in confidence; (b) use the same degree of care with respect to the Technical Specs as Licensee employs to protect Licensee's own confidential and/or trade secret information from unauthorised use, duplication and/or disclosure, being, in any event, a high degree of care; and (c) use the Technical Specs solely for the purpose of assist Licensee shall: (a) receive and maintain the Software in confidence; (b) use the same degree of care with respect to the Software as Licensee employs to protect Licensee's own confidential and/or trade secret information from unauthorised use, duplication and/or disclosure, being, in any event, a high degree of care; and (c) use, duplicate, and disclose the Software solely for the purpose of assisting the Licensee in its understanding and use of the Software as permitted under this EULA. The Licensee shall not duplicate the Technical Specs and shall not disclose them to any third party without the express written consent of Fastman.

17.2. **Independent Contractors**. Fastman and Licensee shall remain independent contractors at all times. Neither Fastman, nor Licensee, shall have any authority to bind the other in any manner.

17.3. **Waiver, Amendment, Assignment.** No waiver of any provision herein shall be binding upon Fastman or Licensee unless set out in a written waiver signed by both parties. This EULA shall only be amended by a written document signed by Fastman and Licensee stating such document is an amendment or an addendum hereto. This EULA shall not be assigned by Licensee, in whole or in part, without Fastman's prior written consent. Each reference herein to "days" means calendar days.

17.4. **Licensee Terms.** All pre-printed terms contained in any document used by Licensee to order software and/or user licenses from Fastman are hereby fully rejected by Fastman and shall have no legal effect.

17.5. **New EULA.** This EULA shall apply to all Software accompanying this EULA or authorised by Fastman in writing for use by Licensee pursuant hereto. Fastman reserves the right to require Licensee to enter into a new license agreement and/or a substantially amended version of this EULA if Licensee wishes to license any further or other software and/or documentation from Fastman at any time or times.

17.6. **Evaluation License.** Fastman may separately licence Fastman Software to the Licensee, via a Fastman Software Evaluation Licence (SELA), in order for Licensee to evaluate the Software within Licensee's environment. Such an agreement does not supersede or replace the provisions of this EULA.

17.7. **Vienna Convention.** All provisions of the United Nations Convention on Contracts for the International Sale of Goods are hereby rejected by the parties and excluded from this EULA in their entirety.

17.8. **Governing Law.** This EULA shall be governed by the laws of Victoria Australia excluding its conflicts and/or choice of law rules. Except for injunctive relief required by Fastman to protect its intellectual property, all litigation related hereto shall occur in the courts located in such jurisdiction. If Licensee or Fastman commence any litigation and/or proceeding against the other related to this EULA, the prevailing party shall be entitled to an award of its reasonable attorney's fees and court costs from the other party.

17.9. **Force Majeure.** Except for payment obligations pursuant to this EULA (including license fees, professional services fees, maintenance and support fees, and applicable taxes) or any obligations relating to the protection of or restrictions applicable to the other party's confidential information or intellectual property, neither party shall be liable to the other or in breach of this EULA by reason of any failure or delay in performance of its obligations to the extent such failure or delay arises (and only for the duration that the affected party is precluded from performing) as a result of acts of God, fire, disaster, explosion, vandalism, storm, adverse weather conditions, strikes, labour disputes or disruptions, epidemics, wars, national emergencies, riots, civil disturbances, shortages of materials, actions or inactions of government authorities, terrorist acts, lockout, work stoppages or other labour difficulties, border delays, failures or interruptions of utilities or telecommunications equipment or services, system failures or any other cause or event that is beyond the reasonable control of that party.

17.10. **Severability.** Should any provision of this EULA be deemed contrary to applicable law and/or unenforceable by any court of competent jurisdiction, such provision shall be considered severed from this EULA, but all remaining provisions shall continue in full force.

17.11. **Third Party Software.** The Software includes software and/or documentation licensed by Fastman from third parties. All trademarks relating to the Software shall remain the property of Fastman, Fastman's licensors, and/or their respective owners. If any such third party software is to be licensed by Fastman to Licensee pursuant to this EULA on license terms different than that contained in this EULA, Licensee and Fastman shall enter into a written amendment to this EULA setting forth such different license terms. Licensee acknowledges that each breach by Licensee of any provision of this EULA may result in any and/or all of Fastman's licensors suffering loss or damage.

17.12. **Press Release.** Licensee agrees Fastman may use and disclose Licensee's name and the nature of this EULA in a Fastman public press release.

17.13. **No Enterprise License.** Unless explicitly stated this EULA is not an Enterprise License agreement. The Software shall not be installed, stored or executed on any server, desktop, or other computer operated by any of Licensee's parent, subsidiary, and/or affiliated companies or by any other party except as explicitly provided for in this agreement.

17.14. **Attribution Notices.** Within the object code, source code, and the graphical user interfaces of the Software, Fastman and Fastman's licensors have inserted various ownership, attribution and/or branding notices including, but not limited to: a) notices attributing copyright and trademark ownership to Fastman, and b) instances of branding which reference other trademarks (all such notices and instances collectively referred to as "Notices"). Without prior written consent of Fastman, the Licensee shall not: a) remove, modify, obscure, re-size or re-locate Notices, or b) cause any Notices to become not visible to any users of the Software.

17.15. **Schedules.** Any agreed variations to this EULA will be documented in schedule(s) to the EULA. Each schedule shall name the clauses being varied, the variations as agreed, the specific software licences to which the variations apply, and agreed date, the duration of the variation. Such schedule(s) shall be agreed and signed by Fastman and Licensee and have effect from the agreed date and for the duration as documented.

17.16. **Purchase Order Conditions.** Any pre-printed terms and conditions on the front or back of any purchase order in conflict with the terms of this EULA shall be rejected automatically without written notice.

18. Entire EULA

18.1. **Entire License Agreement.** This EULA, together with any agreed schedule, written amendment, and/or written addendum to this EULA signed by Fastman and Licensee, sets forth the entire agreement between Fastman and

Licensee with respect to the subject matter hereof, and supersedes all prior oral and written agreements and understandings between the parties relating thereto. Neither party shall be bound by or be liable for any alleged representation, promise, or inducement not expressly stated herein.