

## **ERGO END USER LICENCE AGREEMENT (“EULA”)**

**This EULA is important. It forms a binding legal agreement between you and us. This EULA governs the way in which you may use ERGO and contains limitations on our liability. By continuing with the installation of ERGO and / or using ERGO you are agreeing to be bound by the provisions of this EULA. Please read it carefully before completing installation of ERGO or using ERGO. If you do not agree to be bound by the provisions of this EULA then click the button marked “Disagree” and do not continue with installation of, and do not use, ERGO.**

Please see section 20 below for definitions of the terms used in this EULA

### **1. Formation of a Contract**

- 1.1 In return for acquiring a licence to use ERGO from us, you agree to the following terms and conditions. If ERGO is being or has been installed by someone else on your behalf, then you confirm that you have appointed that person as your agent to confirm acceptance of this EULA on your behalf, and you agree to be bound by this EULA.
- 1.2 If you do not accept the provisions contained within this EULA, you must not install and / or use ERGO and you must notify us in writing to the address set out in the section of this EULA headed “Questions and Notices” within 7 days of the date that ERGO has been provided to you (the expiration of this 7 day period being the “**Acceptance Date**”). Where you have notified us that you do not accept the provisions of this EULA then, once you have (at your cost) returned any copies of ERGO that you have on physical media to us and confirmed that you have entirely removed ERGO from your computer system, we will refund the licence fee paid for ERGO (or, where ERGO was supplied as bundled software with a system or with other software, the amount specified as a refund for bundled copies of ERGO on our web site at the time).
- 1.3 If you continue to install and/or use ERGO, or you have not communicated your non-acceptance of EULA before the Acceptance Date, then you will be deemed to have accepted this EULA and be bound by it.

### **2. Grant of Licence**

- 2.1 This EULA grants you a licence to install and use one copy of ERGO on one computer in accordance with the Documentation and subject always to the other provisions of this EULA, and in particular (but without limitation) the section headed ‘Restrictions’.

### **3. Restrictions**

- 3.1 You shall not, and shall not attempt to:
  - 3.1.1 make copies of ERGO or any Documentation other than:
    - 3.1.1.1 as strictly necessary to install and use ERGO one copy of ERGO on one computer in accordance with the Documentation; and
    - 3.1.1.2 one copy for back-up purposes, provided that all copyright and other proprietary notices are kept intact and such copy is kept in a non-executable form (other than to the extent that the back-up might be restored to replace the executable copy of ERGO).
  - 3.1.2 translate, merge, modify, or adapt ERGO (whether in whole or in part) in any way or for any purpose;
  - 3.1.3 reverse engineer, decompile, disassemble or otherwise discover the source code to ERGO

(whether in whole or in part);

- 3.1.4 design, develop or publish software with materially equivalent functionality or otherwise duplicate the features, functions or look and feel of ERGO (whether in whole or in part);
- 3.1.5 create any derivative works based upon ERGO (whether in whole or in part);
- 3.1.6 sub-licence, sell, lease, rent, assign or otherwise transfer any right to use, copy or exploit ERGO(whether in whole or in part);
- 3.1.7 use ERGO to provide a bureau service;
- 3.1.8 use ERGO in a production environment or as part of any commercial system;
- 3.1.9 make ERGO available over a network, or (whether deliberately or otherwise) connect any device upon which a copy of ERGO resides to a network in such a way that ERGO is available to be used and/or copied (whether in whole or in part) by other users of that network (and for the purposes of this provision the term 'network' includes multiple interconnected networks, the Internet and any 'peer-to-peer' network or series of networks).

#### **4. Assurances**

- 4.1 You agree:
  - 4.1.1 to supervise and control use of ERGO in accordance with the terms of this EULA;
- 4.2 to ensure that your employees, agents and other parties who will use ERGO are notified of and agree to the provisions of this EULA prior to such person using ERGO;
- 4.3 within 7 days after the date of termination of this EULA for whatever reason, to delete and/or destroy all copies of ERGO and all updates, upgrades and copies in your possession or control, as we may direct, and certify this in writing to us as having been completed.

#### **5. Ownership of Software**

- 5.1 You shall own the media upon which ERGO is provided, but we and our third party licensors retain title and ownership of ERGO. No intellectual property rights (including without limitation copyright) are transferred pursuant to this EULA other than the licence to use ERGO as expressly granted by this EULA. All rights in the ERGO not specifically granted in this EULA are reserved by us.

#### **6. Software Updates, Upgrades & New Releases**

- 6.1 You agree to comply with the same restrictions and obligations in respect of any updates, upgrades and new releases of ERGO which we may make available to you from time to time at our sole discretion.

#### **7. Confidentiality**

- 7.1 ERGO contains confidential information, and you agree to maintain the confidentiality of such information and not disclose the information in ERGO to any third party without our prior written consent. You further agree to take all reasonable precautions to prevent any unauthorised access to ERGO.

## **8. Term**

- 8.1 This EULA will commence from the date that ERGO is provided to you.
- 8.2 We have the right to terminate this EULA immediately if you fail or have failed to comply with any term or condition of this EULA. Clause 4.3 of this EULA will apply in the event of such termination.
- 8.3 Termination of the EULA is without prejudice to either party's rights and remedies.
- 8.4 The provisions of this EULA which are expressed to, or intended to, survive termination, shall continue in full force and effect after termination.

## **9. Warranties**

- 9.1 Other than where ERGO is supplied pre-installed on a computer system, we warrant that the media upon which ERGO is provided will be free from defects in material or workmanship under normal use for a period of thirty (30) days from the date of delivery to you.
- 9.2 You acknowledge that software in general, and ERGO in particular, are not error-free and you agree that the existence of such errors shall not constitute a breach of this EULA.
- 9.3 To the maximum extent permitted by English law, we exclude all other assurances with respect to ERGO, including but not limited to any implied assurances relating to satisfactory quality or fitness for any particular purpose.

## **10. Interaction with Internet Services**

- 10.1 Some of the functions provided by ERGO rely upon interaction via the Internet with servers and services owned and run by third parties (the "Internet Functions"). The Internet functions require that the computer upon which ERGO is being executed is connected to the Internet, and the speed and functionality of the computer's Internet connection will affect the availability and responsiveness of the Internet Functions.
- 10.2 ERGO has no control over your connection to the Internet, nor does it have any control over the servers and services owned and run by third parties which the Internet Functions rely upon. You acknowledge that ERGO makes no guarantees, representations, warranties or gives any other commitment regarding the availability, quality, accuracy, completeness, currency or validity of any information provided via the Internet Functions. In addition you acknowledge that use of the Internet Functions may result in a variety of content being presented, which may include content which you find objectionable (including, without limitation, unlawful, pornographic, discriminatory or offensive materials). You therefore agree that use of the Internet Functions is undertaken entirely at your own risk and that you hereby waive any claim that you have or might, in future have, against us in relation to the availability, non-availability, functioning or results presented via use of the Internet Functions. You further agree to indemnify and hold us harmless against any claims that may be brought against us as a result of your use of the Internet Functions.
- 10.3 We, and our licensors, have the right to suspend, remove or replace any of the Internet Functions at any time, and, to the extent that we may do so, you agree that we shall have no liability for such suspension, removal or replacement.
- 10.4 Certain Internet Functions rely upon services provided over the Internet by identified third parties (each a "Third Party Internet Service Provider") whose names and /or logos are shown in ERGO. To the extent that the Internet Functions rely upon a Third Party Internet Service Provider, you acknowledge that your use of ERGO and the Internet Functions to access services provided by

such Third Party Internet Service Provider is, in addition to being subject to the provisions of this EULA, also subject to any terms and conditions of use which the relevant Third Party Internet Service Provider may impose. You acknowledge and agree that it is your responsibility to check and comply with the terms and conditions imposed by each Third Party Internet Service Provider.

## **11. Limitation of Liability**

- 11.1 Nothing in this EULA shall limit or exclude our liability for: death; personal injury; fraud; fraudulent misrepresentation; and any liability which may not be lawfully limited or excluded under English law.
- 11.2 Subject to Clause 11.1, we shall not be liable in any circumstances for consequential, special, incidental or indirect losses, or the following losses whether direct, consequential, special, incidental or indirect losses: loss of profits; loss of revenue; loss of business or contracts; loss of anticipated savings or goodwill; loss of data; (or any losses arising from a claim by a third party for any of the afore-mentioned losses); whether arising under contract, statute, tort (including without limitation, negligence), or otherwise.
- 11.3 Subject to Clause 11.1 our aggregate liability for all claims arising under or in connection with this EULA (whether arising under contract, statute, tort (including without limitation, negligence), or otherwise) shall be limited to the greater of the licence fee paid by you for ERGO or \$249
- 11.4 You acknowledge that the licence fee has been calculated on the basis that we will exclude and limit our liability as set out in this EULA, and that the limitations and exclusions of liability in this EULA are therefore reasonable.

## **12. Force Majeure**

- 12.1 If we are prevented from complying with our obligations due to any event beyond our reasonable control, we shall not be in breach of this EULA or otherwise liable to you by reason of any delay in performance or non-performance of any of our obligations due to such events.

## **13. Assignment and Sub-contracting**

- 13.1 You may not assign this EULA (whether in whole or in part) without our prior written consent.
- 13.2 We may subcontract and assign any or all of our obligations and rights pursuant to this EULA.

## **14. Contracts (Rights of Third parties) Act 1999**

- 14.1 The parties to this EULA do not intend any third party to have any benefit under this EULA. The parties therefore agree that no third party shall have the right to enforce any term of this EULA.

## **15. Variations**

- 15.1 No variation of this EULA shall be effective unless it is in writing and is signed by an authorised representative of each party.

## **16. Severability**

- 16.1 If at any time any part of this EULA becomes void or unenforceable under any applicable law it shall be deemed to be deleted from this EULA and the remaining provisions of this EULA shall continue unaffected.

## 17. Waiver

- 17.1 No provision of the EULA shall be waived unless agreed to be waived by both parties in writing. If any provision is waived, then that waiver shall operate for that instance only and not future instances, unless agreed otherwise by both parties in writing.

## 18. Entire Agreement

- 18.1 This EULA contains the entire agreement between the parties with respect to the subject matter of this EULA (the “**Subject Matter**”) and supersedes all other written and oral communications between the parties relating to the Subject Matter. The express terms, conditions and warranties in this EULA are in lieu of all warranties, conditions, terms, representations, statements, undertakings and obligations whether express or implied by statute, common law, custom, usage or otherwise all of which are hereby excluded to the fullest extent permitted by law. The parties hereby confirm that they have not relied upon any representations, communications or other matters which have not been expressly stated in this EULA. Notwithstanding any provision to the contrary, nothing in this EULA limits or excludes either party’s liability for fraudulent misrepresentations.

## 19. Law, Jurisdiction and Language

- 19.1 This EULA and any dispute or claim arising in connection with it shall be governed by the laws of England and shall be subject to the exclusive jurisdiction of the English Courts to which the parties irrevocably submit. Any dispute or claim arising in connection with this EULA shall be conducted, and all documents, submissions and arguments made by either party in respect of such claim or dispute shall be made, exclusively in the English language.

- 19.2 The governing language of this EULA is English. Where we have provided any version of ERGO where this EULA has been translated into any language other than English then such translation shall be provided for convenience only and in the case of any discrepancy between the translation and the original English language version of this EULA, the English language version will prevail.

### 19.3 Questions & Notices

- 19.4 Should you have any questions concerning this EULA, we may be contacted by writing to Legal Dept, Invu 2007 Limited, The Beren, Blisworth Hill Farm, Stoke Road, Blisworth, Northamptonshire, NN7 3DB, United Kingdom.

## 20. Definitions

- 20.1 In this EULA the following terms shall, except where the context requires otherwise, have the following meanings:

- 20.1.1 “**Documentation**” means any documentation (whether physical or electronic) which is supplied with or as part of ERGO, including (without limitation), user manuals, help files and similar materials.

- 20.1.2 “**ERGO**” means, whether in whole or in part, the software product known as Ergo which has been and is being developed by Us, and for the avoidance of doubt includes both the program code and non-code elements of that software and all Documentation relating to such software;

- 20.1.3 “**EULA**” means this End User Licence Agreement;

- 20.1.4 “**we**”; “**us**”; “**our**” and similar expressions means Invu 2007 Limited, a company registered in

England with registration number 06283287, whose registered office is at The Beren, Blisworth Hill Farm, Stoke Road, Blisworth, Northampton, Northamptonshire NN7 3DB;

20.1.5 **“you”**; **“your”** and similar expressions mean the person installing and/or using ERGO;