



**S Y M M E T R I C S**  
Contact Center Performance Management

**SYMMETRICS nVISION Info Manager LICENSE AGREEMENT**  
(for Symmetrics' nVISION Info Manager/Pentaho Version)

**IMPORTANT-READ CAREFULLY:** THIS IS A LEGAL AGREEMENT BETWEEN YOU AND SYMMETRICS BUSINESS INTELLIGENCE SOLUTIONS INC. ("SYMMETRICS") FOR THE SYMMETRICS SOFTWARE PRODUCT ACCOMPANYING THIS AGREEMENT, WHICH MAY INCLUDE COMPUTER SOFTWARE, ASSOCIATED MEDIA, PRINTED MATERIALS AND ONLINE OR ELECTRONIC DOCUMENTATION ("SOFTWARE"). BEFORE CONTINUING WITH THE INSTALLATION OF THE SOFTWARE, YOU MUST READ, ACKNOWLEDGE AND ACCEPT THE TERMS AND CONDITIONS OF THE SOFTWARE LICENSE AGREEMENT THAT FOLLOWS ("AGREEMENT"). IF YOU DO NOT ACCEPT THE TERMS AND CONDITIONS OF THE AGREEMENT, YOU MAY RETURN, WITHIN THIRTY (30) DAYS OF PURCHASE, THE SOFTWARE TO THE PLACE YOU OBTAINED IT FOR A FULL REFUND.

**1. GRANT OF LICENSE.** Symmetrics grants you a nonexclusive and limited license to use the Software products and functionalities for which you have paid the applicable fees solely for your internal business purposes and in accordance with the terms and conditions of this Agreement. The Software is licensed, not sold, to you. If you acquired this product as a special offer or as a promotional license included with another Symmetrics product, additional restrictions may apply. If you acquired this product bundled or in combination with a third party product, you may only use the Software with the third party product as described in section 3.2 ("Restricted License") below. This license does not apply to any other software program provided with the Software, including promotional software, which is governed by the online software license agreement included with that software.

**2. INSTALLATION AND USE.** You may install and use the Software only in the configuration and for the number of licenses acquired by you. You may also install non-production copies of the Software as is reasonably necessary for disaster recovery, emergency restart and backup, including, but not limited to making copies for such purposes for use at one or more disaster recovery sites.

**3. LICENSE TYPES AND DEFINITIONS.**

**3.1. Named User License ("NUL").** When the Software is licensed on a Named User basis, each individual Named User must be specifically identified as the sole holder of a NUL. The sharing of the NUL by more than one individual is expressly prohibited. In addition, NUL(s) may not be transferred from one individual to another unless the original end user no longer requires, and is no longer permitted, access to the Software. NUL(s) are assigned to a single Deployment and may not be shared among different Deployments.

**3.2. Concurrent Access License ("CAL").** When the Software is licensed on a Concurrent Access basis, the aggregate number of end users accessing the Software at any one time may not exceed the number of CALs you have obtained. CAL(s) are assigned to a particular Deployment, and may not be shared among different Deployments. When using Concurrent Access licenses, you may not utilize a program or system to cache or queue report requests.

**3.3. Restricted License.** If you acquired the Software bundled or otherwise provided in combination with or for use with a third party product ("OEM Application"), you have acquired a Restricted License. You may use each licensed copy of the Software only in conjunction with the OEM Application with which it was provided. Accessing data that is not specifically created or processed by the OEM Application is in violation of this license. If the OEM Application requires the use of a data mart or data warehouse, the Software may be used with the data mart or data warehouse only to access data created or processed by the OEM Application. Restricted Licenses may not be combined with unrestricted licenses in the same Deployment.

**3.4. Development License.** If you receive a Development License, you may use the number and type of licenses acquired only to develop or test Deployments. A Development License cannot be used in or transferred to a production environment.

**3.5. Update License.** If you received the Software as an update to a previously licensed product, your license to use the Software is limited to the aggregate number of licenses you have acquired for the previous product. If you choose to use the Software and the previous product simultaneously, the aggregate number of licenses used to access the Software and the previous product may not exceed the aggregate number of licenses you acquired for the previous product.

**3.6. Evaluation/Not for Resale License.** An Evaluation or Not For Resale license may be used only for the number and type of licenses specified and for the period specified on the Software packaging, ordering or shipping documentation. If the ordering or shipping documentation specifies a particular project, the Software may be used only with that project. An Evaluation License may only be used for evaluation purposes and may not be used for production purposes. Notwithstanding any other provision of this Agreement, Software provided under an Evaluation or Not for Resale licenses is provided "AS-IS" without warranty of any kind, express or implied. An Evaluation License or Not for Resale License may be terminated by Symmetrics upon written notice at any time.

**4. OWNERSHIP.** Symmetrics and/or its suppliers retain all right, title and interest in and to the Software and all copies at all times, regardless of the form or media in or on which the original or other copies may subsequently exist. You neither own nor hereby acquire any claim or right of ownership to the Software or to any related patents, copyrights, trademarks or other intellectual property. You agree to retain the Software, the terms of this Agreement as well as any Software benchmark or similar tests (whether performed by you, Symmetrics or any third party) in confidence and prevent them from unauthorized disclosure or use except with Symmetrics' prior written consent. Symmetrics and/or its suppliers reserve all rights not expressly granted to you. Symmetrics' suppliers are the intended third party beneficiaries of this License Agreement and have the express right to rely upon and directly enforce the terms set forth herein.

**5. COPYRIGHT.** The Software is copyrighted by Symmetrics and/or its suppliers and is protected by International copyright and patent laws and international treaty provisions. You may not copy the Software except: (a) to provide a non-production backup copy; or (b) to install the Software components licensed by you, as set forth in Sections 2, on to computers as part of executing the Software. Solely with respect to the documentation included with the Software, you may make a reasonable number of copies (either in hardcopy or electronic form), provided that such copies shall be used only by licensed end users in conjunction with their use of the Software and are not republished or distributed to any third party. You must reproduce and include



**S Y M M E T R I C S**  
Contact Center Performance Management

all copyright notices, trademarks or other proprietary legends of Symmetrics and its suppliers on any copy of the Software or documentation made by you. Any and all other copies of the Software made by you are in violation of this Agreement.

**6. RESTRICTIONS.** Except as expressly permitted by this License Agreement or by applicable law you may not: (a) lease, loan, resell, assign, sublicense, or otherwise distribute the Software or any of the rights granted by this License Agreement without the express written permission of Symmetrics; (b) use the Software to provide or operate Application Service Provider (ASP), service bureau, marketing, training, outsourcing services, or consulting services, or any other commercial service related to the Software or to develop training materials; (c) modify (even for purposes of error correction), adapt, or translate the Software or create derivative works therefrom except as necessary to configure the Software using the menus, options and tools provided for such purposes and contained in the Software; (d) in any way reverse engineer, disassemble or decompile the Software or the .RPT report file format (including reverse compiling to ensure interoperability) or any portion thereof except to the extent and for the express purposes authorized by applicable law notwithstanding this limitation; ; (e) use the Software to develop a product which is competitive with any Symmetrics product offerings; (f) use the Software to develop a product that converts the report file (.RPT) format to an alternative report file format used by any general-purpose report writing, data analysis or report delivery product that is not the property of Symmetrics;; (g) use unauthorized keycode(s) or distribute keycode(s); (h) disclose any Software benchmark results to any third party without Symmetrics' prior written approval, (i) permit third party access to, or use of the Software except as expressly permitted herein, and (j) distribute or publish keycode(s). If you wish to exercise any right to reverse engineer to ensure interoperability in accordance with applicable law, you shall first provide written notice to Symmetrics and permit Symmetrics, at its discretion, to make an offer to provide information and assistance reasonably required to ensure Software interoperability with your other products for a fee to be mutually agreed upon (if any).

**7. LIMITED WARRANTY AND REMEDY.**

**(a)** Symmetrics warrants to you that: (i) for a period of thirty (30) days from delivery of the Software, the Software will substantially conform to the functional description set forth in the standard documentation accompanying the Software; and (ii) for a period of thirty (30) days from delivery the physical media (e.g., CD-ROM), such physical media will be free from defects in materials and workmanship. Any implied warranties on the Software and media are limited to thirty (30) days from delivery, to the extent such warranties cannot be disclaimed under Section 8(c) below. The above warranties specifically exclude defects resulting from accident, abuse, unauthorized repair, modifications, or enhancements, or misapplication. Symmetrics does not warrant that the Software will operate uninterrupted or error free. Delivery of additional copies of, or revisions or upgrades to, the Software, including releases provided under Support Services, shall not restart or otherwise affect the warranty period.

**(b)** Your exclusive remedy for breach of the above-stated limited warranty shall be, at Symmetrics' option, either: (i) correction or replacement of the Software with product(s) which conform to the above-stated limited warranty; or (ii) return of the price paid for the Software and termination of this License Agreement with respect to those copies not in compliance. Such remedy shall be provided to you by Symmetrics only if you give Symmetrics written notice of any breach of the above-stated limited warranty, within thirty (30) days of delivery of the Software.

**(C)** EXCEPT FOR EXPRESS WARRANTIES STATED IN THIS SECTION 8, SYMMETRICS AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY (I) OF MERCHANTABILITY, (II) OF FITNESS FOR A PARTICULAR PURPOSE, (III) OF NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR (IV) AGAINST HIDDEN DEFECTS. SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU, AND YOU MAY HAVE OTHER LEGAL RIGHTS THAT VARY FROM STATE TO STATE OR BY JURISDICTION. YOU ACKNOWLEDGE THAT IN ENTERING INTO THIS AGREEMENT, YOU HAVE RELIED UPON YOUR OWN EXPERIENCE, SKILL AND JUDGEMENT TO EVALUATE THE SOFTWARE AND THAT YOU HAVE SATISFIED YOURSELF AS TO THE SUITABILITY OF THE SOFTWARE TO MEET YOUR REQUIREMENTS.

**8. LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL SYMMETRICS OR ITS DISTRIBUTORS, SUPPLIERS OR AFFILIATES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, ANY LOST PROFITS OR REVENUES, LOSS OR INACCURACY OF ANY DATA, OR COST OF SUBSTITUTE GOODS, REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING NEGLIGENCE) AND EVEN IF SYMMETRICS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SYMMETRICS AND ITS SUPPLIERS' AGGREGATE LIABILITY TO YOU FOR ACTUAL DIRECT DAMAGES FOR ANY CAUSE WHATSOEVER SHALL BE LIMITED TO THE SOFTWARE LICENSE FEES PAID BY YOU FOR THE SOFTWARE OR THE FEES PAID BY YOU FOR THE SERVICE DIRECTLY CAUSING THE DAMAGES. THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING ALLOCATION OF RISK IS REFLECTED IN THE FEES CHARGED UNDER THIS LICENSE AGREEMENT. SOME STATES/JURISDICTIONS DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY IN CERTAIN CIRCUMSTANCES INCLUDED IN THIS SECTION, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU ONLY IN SUCH CIRCUMSTANCES.

**9. SUPPORT SERVICES.** If you purchased Support Services, Symmetrics will provide to you product support services for the Software in accordance with Symmetrics then current Support Services terms and conditions. If you purchase Support Services for the Software, you must purchase Support Services for all authorized copies of said Software in your possession.

**10. TERMINATION.** This Agreement is effective until terminated. You may terminate this License Agreement at any time by providing Symmetrics with written notice, provided that you have complied with the return and/or destruction policy set forth below. However, you shall receive a refund of your license fee only if this Agreement is terminated in compliance with Section 8 hereof. If you ordered an Evaluation License for the Software that is time disabled, this Agreement will automatically terminate after the Evaluation Period, and you agree not to avoid, or attempt to avoid, any applicable time limitation. This Agreement may be terminated by Symmetrics if: (i) you fail to pay the license fees and other charges set forth at the time of your order; or (ii) you fail to comply with any of the terms and conditions set forth in this Agreement and do not remedy such failure within thirty (30) days after receiving notice thereof. Termination shall not relieve you from your obligation to pay fees that remain unpaid and shall not limit



**S Y M M E T R I C S**  
**Contact Center Performance Management**

Symmetrics from pursuing other available remedies. Upon termination by Symmetrics of this Agreement, Symmetrics will have no obligation to refund to you any fees paid by you and you agree to waive in perpetuity and unconditionally any and all claims for refunds. Upon any termination of this Agreement, you agree to: (i) immediately cease all use of the Software, including the use and distribution of any Custom Applications incorporating the Software; and (ii) either return the Software to Symmetrics or destroy same, and certify to Symmetrics, in writing, that all copies and partial copies thereof have been returned or completely destroyed and are no longer being used.

**11. AUDIT.** During the term of this Agreement and for two (2) year after termination or expiration, Symmetrics may audit, upon reasonable notice to you and at Symmetrics' expense, your books and records to determine your compliance with this Agreement. In the event any such audit reveals that you have underpaid Symmetrics by an amount greater than five percent (5%) of the amounts due Symmetrics in the period being audited, or that you have knowingly breached any material obligation hereunder, then, in addition to such other remedies as Symmetrics may have, you shall pay or reimburse to Symmetrics the cost of the audit.

**12. GENERAL.** If any provision of this Agreement is ruled invalid, such invalidity shall not affect the validity of the remaining portions of this Agreement. This Agreement constitutes the entire agreement between you and Symmetrics, and supersedes any prior agreement, whether written or oral, relating to the subject matter of this Agreement. This Agreement may not be modified except by an instrument in writing duly signed by an authorized representative of each of the parties. If you are acquiring the Software on behalf of an entity, you represent and warrant that you have the legal capacity to bind such entity to this Agreement. All terms of any purchase order or other ordering document submitted by you shall be superseded by this Agreement. In the event you and Symmetrics have executed a mutually agreed upon a separately executed software license and related services agreement ("MSLA") and acquired the Software pursuant to such MSLA, the terms of the MSLA may govern your use of the Software and the terms of this Agreement shall be superseded by the MSLA. The product name for the Software is a trademark or registered trademark of Symmetrics. Should you have questions concerning this License Agreement, please contact your local Symmetrics sales office or authorized reseller, or write to: Symmetrics, Attn: Contracts Department, 3030 Orchard Parkway, San Jose, CA 95134.

**14. U.S. GOVERNMENT RESTRICTED RIGHTS.** The Software is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995) (or an equivalent provision, e.g., in supplements of various U.S. government agencies, as applicable), all U.S. Government users acquire the Software with only those rights set forth herein.

**15. EXPORT CONTROLS.** You agree to comply with all applicable international and national laws that apply to the Software, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments.

**16. ORDER TERMS.** Purchase orders conforming to Symmetrics purchase order requirements may be accepted from qualified companies. All pre-printed terms of any purchase order not approved in writing by Symmetrics shall have no effect. FOB Symmetrics facility. Symmetrics specifically disclaims price guarantees of any kind. You are responsible for payment of all applicable sales, use, consumption, VAT, GST, and other taxes and all applicable export and import fees, custom duties and similar charges, excluding taxes based on Symmetrics net income.

**17. GOVERNING LAW.** Except as otherwise preempted by United States federal law, this Agreement is governed by the laws of the State of Washington, United States, without reference to conflict of laws provisions or the United Nations 1980 Convention on Contracts for the International Sale of Goods and any amendments thereto.