

SYMETRI – SOFTWARE LICENSE AND SUBSCRIPTION TERMS – SYMETRI PRODUCTS

1. General

- 1.1 These Software License and Subscription Terms (the “Terms”) are applicable for all licensing of Symetri’s own software products (the “Licensed Programs”) by applicable Symetri company (“Symetri”) to the customer (“Customer”). These Terms do not apply to any third party software.
- 1.2 These Terms also applies for any human readable documentation in hard copy or electronic form, such as program listings, flow charts, logic diagrams, input and output forms, any present or future manuals, instructions, user guides and any other materials related to Licensed Program (the “Documentation”).
- 1.3 In addition to these Terms Symetri’s General Standard T&C shall apply and prevail. Thus, these Terms including any indemnifications and warranties in these Terms are subject to any limitation of liability in Symetri’s General Standard T&C.
- 1.4 These Terms together with Symetri’s General Standard T&C and any agreement, appendices and/or any offers issued by Symetri and accepted by the Customer constitutes the agreement between the parties (the “Agreement”).

2. License grant and term of license

- 2.1 Subject to the Terms hereof and the Agreement, payment of all fees and any applicable user/use limitations set forth in the Agreement, Symetri hereby grants the Customer a non-exclusive, non-transferable and non-assignable, limited license to install and use the Licensed Programs and any Documentation. The license granted is in all cases solely granted a) within the scope of and subject to the terms of the specific license type, b) for the specific number of permitted users according to the Agreement, c) for internal business purposes only, d) for use in the EU/EES, and e) during the term of the Agreement.
- 2.2 The license is granted either as a *Network License* or a *Stand-alone License*, as specified in the Agreement. Each license is granted for a specific permitted number of users as specified in the Agreement. If the Agreement does not specify a license type or permitted number of users, the license is granted as a Stand-alone License for one (1) permitted user. The terms for each license type are specified below. Any limitations in these Terms in relation to the Licensed Programs shall apply also in relation to the Documentation.

2.3 Stand-alone License

Under a Stand-alone License the Licensed Programs may be installed on one (1) single computer per permitted user. The Licensed Programs may not be installed on, or operated, or otherwise accessed from or through any other computer (e.g. through a network of any kind).

The Customer may also install a single additional copy of such Licensed Programs on one (1) additional computer in accordance with above provided that (i) such additional copy of the Licensed Products is accessed solely by the same person as the primary copy; (ii) such person accesses the additional copy solely to perform work while away from that person’s usual work location; and (iii) the primary version and additional copy are not accessed at the same time.

2.4 Network License

Under a Network License the Customer may install copies of Licensed Programs on one (1) computer and permit access to such Licensed Programs on multiple computers, on a “Networked Basis”, only so long as the maximum number of concurrent users does not exceed the permitted number of users or other limits specified in the Agreement or in the Documentation.

“*Networked Basis*” means a computing environment that includes a computer acting as a file server which allows the Licensed Programs installed on such computer to be uploaded and installed to, and operated, viewed or otherwise access from, other computers through a local area network connection or secure VPN connection that complies with industry standard encryption mechanisms.

The Customer may also install the Licensed Programs on a backup server, provided that the Customer may only access the Licensed Programs on the backup server during the time period when, and solely for as long as, the primary installed copy of the Licensed Programs is inoperable and only subject to the same terms and conditions as are applicable to the primary installed copy.

- 2.5 The Licensed Programs may only be used by users that are employed by the Customer. Provided that the Customer assumes full liability for the use of the Licensed Programs by an individual that acts as a contractor working for the Customer (such as a consultant etc.), the Licensed Programs may also be used by such a user.

2.6 A license is either a) purchased or b) rented on a monthly/quarterly/yearly basis, as specified in the Agreement. All license rights are granted subject to the terms and conditions of these Terms and the payment of all applicable license fees. The Customer shall pay Symetri the fees, charges and other amounts specified in the Agreement.

3. Subscription and Support

3.1 Subscription is included in the Customer's license of the Licensed Programs for one (1) year when the Customer has purchased the license and for the term of the Agreement when the Customer is renting the license. Subscription includes free updates and new software versions and releases of Licensed Program and any Documentation.

3.2 Subscription also includes fixes for the standard products of the Licensed Programs and such fixes will normally be provided as part of the new versions. Any such new updates, new versions and releases are regarded as a part of the Licensed Programs. For fixes and updates to customized versions of the Licensed Programs and/or any installation or configuration work Symetri will charge the Customer according to Symetri's terms and conditions for consulting services.

3.3 Symetri offers support subject to separate Support Terms.

4. Access to Licensed Programs

4.1 Symetri will make the Licensed Programs and any Documentation available to the Customer, e.g. by download.

4.2 Installation of the Licensed Programs and any Documentation may only be provided by Symetri subject to a separate written agreement between Symetri and the Customer.

5. Restricted use of the Licensed Programs

5.1 The Customer shall only use the Licensed Programs for the agreed and intended use and in accordance with any Documentation and other instructions from Symetri.

5.2 The Customer shall not use or permit or encourage a third party to use the Licensed Programs in violation of these Terms and shall be liable for any of its user's use of the Licensed Programs. Especially the Customer shall not;

- (a) let any person other than the permitted users use the Licensed Programs;

- (b) itself or with the assistance of third parties, examine, copy, reproduce, translate, decompile, repair, reverse engineer or modify the Licensed Programs or any Documentation except to the extent required to obtain interoperability with other independently created software or as otherwise permitted by mandatory law;

- (c) merge (in whole or in part), bundle or distribute the Licensed Programs or any Documentation together with other software.

5.3 The number of permitted users may never be exceeded. The Customer shall immediately report to Symetri if the Customer needs to expand the number of permitted users.

5.4 Should the Customer not comply with the provisions of this clause 5, Symetri assumes no responsibility or liability whatsoever for such adverse effects in relation to the Licensed Programs which actually or potentially occur as a consequence of such breach of the Customer's obligations under these Terms. Furthermore, Symetri shall not assume any responsibility for any adverse effects in relation to the Licensed Programs resulting due to the Customer itself or with the assistance of third parties exercises its legal rights as mentioned in clause 5.2(b) above.

6. Audit

6.1 Symetri shall have the right, at any time during the term of the Agreement and for a period of one (1) year thereafter, to have an independent audit firm selected by Symetri perform an audit to determine and verify that the Licensed Programs and any Documentation are used in compliance with the Agreement including these Terms. Any such audit will be conducted during normal business hours in a manner so as not to unreasonably interfere with the Customer's normal operations.

6.2 The audit will be conducted at Symetri's expense, unless the audit reveals an underpayment of license fees for the relevant period in which case the Customer shall reimburse Symetri for all reasonable costs and expenses incurred by Symetri in connection with such audit, together with any applicable license fees. The Customer shall cooperate with any audit firm selected by Symetri and, inter alia, grant such audit firm access to the Customer's premises.

7. Use of Data

7.1 The Customer agrees that Symetri may collect and use technical information (activity, feature and usage pattern) gathered from the Customer and/or its users in order to facilitate and improve the functionality and identify support needs of the Licensed Programs as well as improve the Licensed Programs.

7.2 Any personal data submitted to Symetri by the Customer shall be processed and/or transferred in strict accordance with the applicable data protection laws.

8. Intellectual Property Rights

8.1 Any and all intellectual property rights to the Licensed Programs and any Documentation are owned by Symetri and, as the case may be, Symetri's suppliers. Except only as expressly stated herein, the Customer is not granted any license, right or franchise with respect of the Licensed Programs or any part thereof.

8.2 Unauthorized use or copy of the Licensed Programs constitutes unlawful infringement of intellectual property rights and may lead to liability for damages and other remedies in accordance with the legislation in force and/or the Agreement including these Terms.

9. Infringement of Intellectual Property Rights

9.1 Subject to the limitation of liability in Symetri's General Standard T&C, Symetri undertakes to defend, indemnify and hold harmless the Customer from and against any and all damages, costs and expenses payable by the Customer incurred as a result of any claim, suit or proceeding brought against the Customer based on the allegation that the use of the Licensed Programs constitutes an infringement of any intellectual property rights; provided that Symetri has been notified without undue delay in writing of such claim, suit or proceeding and given authority, reasonable information, and assistance (to a reasonable extent by the Customer and at Symetri's expense) to settle the claim or control the defence of any suit or proceeding. In the event and to the extent Symetri does not initiate and proceed with a defence in a professional manner, the Customer may take all necessary steps, at the expense of Symetri, to defend and settle the claim, in which case the Customer will inform Symetri in writing of any such legal actions taken. Before the Customer takes any such action it shall inform Symetri in writing and ensure Symetri is given time to initiate a defence.

9.2 If the Licensed Programs becomes, or in Symetri's opinion is likely to become, the subject of any such claim, suit or proceeding as referred to in clause 9.1, Symetri shall, at its option and expense, either:

- (a) procure for the Customer the right to continue to use the Licensed Programs in accordance with the Agreement;
- (b) replace the allegedly infringing parts of the Licensed Programs with non-infringing equivalents;

(c) modify the Licensed Programs so that it becomes non-infringing without detracting from function or performance; or

(d) if in Symetri's opinion none of the possibilities set out above are commercially feasible, terminate the Agreement and take back the infringing Licensing Programs and reimburse the license fee to the Customer, with a deduction of a reasonable sum in respect of the Customer's use of the Licensed Programs to the date of termination.

9.3 The obligations set forth in clauses 9.1 and 9.2 shall not apply if the claim is caused by, or results from:

(a) the Customer's combination or use of the Licensed Programs with software, services, or products developed by the Customer or third parties, if the claim would have been avoided by the non-combined or independent use of the Licensed Programs;

(b) modification of the Licensed Programs by anyone other than Symetri if the third party claim would have been avoided by use of the unmodified Licensed Programs;

(c) the Customer continues the allegedly infringing activity after being notified thereof or after being provided modifications or replacements that would have avoided the alleged infringement; or

(d) the Customer uses or has used the Licensed Programs in a manner not in accordance with the Agreement or Symetri's written instructions.

9.4 The remedies set forth above shall be the Customer's sole and exclusive remedies in case of a claim as referred to in clause 9.1

9.5 The Customer shall indemnify and hold harmless Symetri from and against any and all damages, costs and expenses (including reasonable fees of attorneys and other professionals) incurred as a result of any claim, suit or proceeding brought against Symetri based on the allegation that the Customer's use of the Licensed Programs constitutes an infringement of any third party rights, including but not limited to, if such claim results from:

(a) the Customer's combination or use of the Licensed Programs with software, services, or products developed by the Customer or third parties, if the claim would have been avoided by the non-combined or independent use of the Licensed Programs;

(b) modification of the Licensed Programs by anyone other than Symetri if the third party claim would have been avoided by use of the unmodified Licensed Programs;

- (c) the Customer continues the allegedly infringing activity after being notified thereof or after being provided modifications or replacements that would have avoided the alleged infringement; or
- (d) the Customer uses or has used the Licensed Programs in a manner not in accordance with the Agreement or Symetri's written instructions.

When the Customer is renting the license: an initial term of one (1) year unless otherwise is agreed between the parties in writing. Unless terminated by either party giving the other party at least three (3) months written notice, the Agreement shall thereafter continue in effect until further notice with the same notice period.

When the Customer has purchased the license: as long as the Customer uses the Licensed Product.

10. Limited Warranty

- 10.1 Symetri warrants for a period of one (1) year after delivery to the Customer, that the Licensed Programs, when used in accordance with any Documentation and in accordance with Symetri's instructions, will operate and perform substantially in accordance with any provided specification and any Documentation.
- 10.2 In case of defects for which Symetri is liable Symetri shall at its own option, either a) provide an update, new version or rectify the defect in accordance with clause 3, b) replace the Licensed Programs with non-defect software; or c) refund the license fee received from the Customer for the defect Licensed Program. In order to be valid, claims for defects shall be made in writing as soon as the defect is discovered and at latest as stipulated in a separate support agreement between the parties.
- 10.3 Symetri is not liable for defects that are wholly or partly caused by the Customer, its personnel, or the computer environment used by the Customer, or wholly or partly a result of incorrect or altered conditions for the Licensed Programs or any Documentation.
- 10.4 The remedies set forth above shall be the Customer's sole and exclusive remedies in case of any breach of warranties as referred to in this clause 10.
- 10.5 The Customer assumes full responsibility for its use of the Licensed Programs and any information entered, used and stored therein as well as for ensuring that data is not inadvertently modified, deleted, destroyed or disclosed, and for the accuracy and integrity of the results of using the Licensed Programs. Symetri assumes no responsibility for the Customer's negligence or failure to take adequate measures to protect data from inadvertent modification, deletion, destruction or disclosure.
- 10.6 The Customer is solely responsible for determining the appropriateness of using the Licensed Programs and any Documentation and assumes any risks associated with its exercise of permissions under this license.

11. Term and termination

The Agreement and the license rights granted thereunder shall be effective as follows.