

License Agreement

THIS AGREEMENT is between Salient Corporation, a New York corporation with its principal office and place of business located at 203 Colonial Drive, Horseheads, NY 14845 (“Salient”) and any party that accesses proprietary software of Salient without a signed license agreement (any such party being referred to as “Client”). This Agreement applies to any proprietary software program to which no signed license agreement applies, even if a signed license agreement between the parties governs another software program. This Agreement is effective as of the date Client first accesses such proprietary software.

1. Definitions

1.1 Client

The term “Client” as used herein shall be deemed to include Client and any employee or contractor of Client, to the extent that such employee or contractor uses the Software or Documentation. An employee or contractor of Client may use the Software solely in the performance of such person’s duties as an employee or contractor of Client.

1.2 Documentation

“Documentation” means all user manuals and other written and/or electronic material created by Salient to describe the functionality or assist in the use of the Software.

1.3 Named User

A “Named User” is an individual natural person who is authorized to use the Software and Documentation pursuant to the license herein granted.

1.4 Named User License

A “Named User License” is a license for one (1) Named User to access the Software.

1.5 Software

“Software” means any proprietary software program to which no signed license agreement applies, but to which Salient may give Client access from time to time in its sole discretion.

2. Grant of License

2.1 Grant

Subject to the terms and conditions set forth in this Agreement, Salient hereby grants to Client a personal, non-transferable and non-exclusive license in the Software, for Named Users to use the Software . Only employees, consultants, and contractors of Client may be Named Users. This license shall be subject to such limitations as Salient may in its sole discretion provide, including by way of example limitations as to Named User Licenses. The term of this license shall commence when Salient in its sole discretion gives Client access to the Software and shall terminate when Salient in its sole discretion terminates Client’s access to the Software either by written notice to Client or by withdrawal of the license file needed to access the Software. To the extent that Salient in its sole discretion gives Client access to the Documentation, Salient grants to Client the right for Named Users to use the Documentation solely in conjunction with Client’s use of the Software in accordance with the terms of this Agreement.

2.2 Access to the Software

This license extends only to use of the Software by Named Users to whom Client has assigned Named User Licenses provided by Salient from time to time in Salient’s sole discretion. Any Named User License purchased hereunder may, if specified by Salient, be limited to one or more particular methods of accessing the Software. In that case, the Named User to whom a Named User License has been assigned may access the Software only by the method(s) applicable to the Named User License. Multiple Named User Licenses may be assigned to a single Named User for the purposes of increasing the methods by which such Named User may access the Software.

2.3 License Restrictions

(a) Except as specifically granted in this Agreement, Salient owns and retains all right, title, and interest in the Software, Documentation, and any and all related materials. This Agreement does not transfer ownership rights of any description in the Software, Documentation, or any related materials to Client or any third party. Client shall take any necessary steps to protect Salient’s intellectual property rights in and to the Software and Documentation.

(b) Client shall not modify, reverse engineer, or decompile the Software, or create derivative works based on the

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Software or the Documentation. Client shall neither distribute the Software or the Documentation to, nor allow access to the Software or the Documentation by, any persons or entities other than Named Users. Client shall ensure that all Named Users abide by the terms of this Agreement. Client shall further notify Salient if Client becomes aware of any use of the Software or Documentation in violation of the terms of this Agreement. Client may not sell the Software or Documentation to any person or make any commercial use of the Software other than as provided in this Agreement. Client shall retain all copyright and trademark notices on the Software and Documentation.

2.4 Instances of the Software

Client is licensed to use the number of instances of the Software as may be allowed by Salient from time to time in its sole discretion.

2.5 Audit Rights and License Verification

Salient reserves the right to conduct an audit of Client's compliance with the terms of this Section 2, which audit shall be completed with reasonable notice and during Client's regular business hours. Further, Client agrees to provide to Salient, from time to time as reasonably requested by Salient, logs from the Software sufficient to prove that the Software is being used in a manner consistent with the license, as well as an accurate list of all Named Users.

3. Termination

This Agreement may be terminated by either party at any time in its sole discretion and shall also be deemed to have terminated in the event that Salient and Client enter a written agreement by which Client licenses the Software from Salient. Salient has and reserves all rights and remedies that it has by operation of law or otherwise to enjoin the unlawful or unauthorized use of Software or Documentation. On termination, (a) all rights granted to Client under this Agreement cease and Client will promptly cease, and cause all of its employees and contractors to cease, all use and reproduction of the Software and Documentation and (b) Client will, and will cause its employees and contractors to, promptly return all copies of the Software and Documentation to Salient or, at Salient's option, destroy all of Client's copies of the Software and Documentation and so certify to Salient in writing within fourteen (14) days of termination. Sections 2.3(a), 3, 4, 5, 6, 8.8, and 8.9 will survive termination of this Agreement as will any cause of action or claim of either party, whether in law or in equity, arising out of any breach or default.

4. Warranties, Disclaimer, and Limitations

4.1 Warranties

Salient hereby warrants to Client that Salient is the owner of the Software and the Documentation or has the right to grant to Client the license to use the Software and Documentation in the manner and for the purposes set forth in this Agreement without violating any rights of a third party. This warranty shall survive inspection, test, acceptance, use and payment.

4.2 Remedy on Breach of Warranty

In the event of any breach of the warranty set forth in Section 4.1, Client's sole remedy shall be to terminate this Agreement.

4.3 Data Accuracy

The Software organizes data provided by Client according to organizational rules provided by Client. Accordingly, the Software relies on Client-provided data and logical rules to produce an output that is valuable to Client. Salient expressly disclaims any responsibility to cure any defect in the Software's output that is caused by a defect in the data or organizational rules provided by Client. Salient shall not be responsible for the usefulness of the Software's output. It is the responsibility of Client to establish organizational rules and to monitor its input to assure the usefulness of the Software's output.

4.4 Disclaimer

THE WARRANTIES SET FORTH IN SECTIONS 4.1 AND 4.2, ABOVE, ARE IN LIEU OF, AND THIS AGREEMENT EXPRESSLY EXCLUDES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (a) ANY WARRANTY THAT THE SOFTWARE IS ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION, OR IS COMPATIBLE WITH ALL EQUIPMENT AND SOFTWARE CONFIGURATIONS; (b) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY; AND (c) ANY AND ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE. ANY AND ALL WARRANTIES SHALL BE VOID AS TO SOFTWARE DAMAGED OR RENDERED UNSERVICEABLE BY: (1) THE ACTS OR OMISSIONS OF

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NON-SALIENT PERSONNEL; (2) MISUSE, THEFT, VANDALISM, FIRE, WATER, OR OTHER PERIL; OR (3) MOVING, RELOCATION, ALTERATIONS OR ADDITIONS NOT AUTHORIZED BY SALIENT.

4.5 Limitation of Liability

SALIENT SHALL NOT BE LIABLE FOR ANY (a) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING FROM OR RELATED TO THE OPERATION OR USE OF THE SOFTWARE AND SERVICES INCLUDING, WITHOUT LIMITATION, DAMAGES ARISING FROM LOSS OF DATA OR PROGRAMMING, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS OR OTHER BENEFITS, DAMAGE TO EQUIPMENT, AND CLAIMS AGAINST CLIENT BY ANY THIRD PERSON, EVEN IF SALIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; (b) DAMAGES (REGARDLESS OF THEIR NATURE) FOR ANY DELAY OR FAILURE BY SALIENT TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT DUE TO ANY CAUSE BEYOND ITS REASONABLE CONTROL; OR (c) ANY CLAIM MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST SALIENT MORE THAN TWO YEARS AFTER THE CORRESPONDING CAUSE OF ACTION FIRST AROSE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, SALIENT'S LIABILITIES UNDER THIS AGREEMENT SHALL NOT BE GREATER THAN THE AMOUNTS ACTUALLY RECEIVED BY SALIENT FROM CLIENT RELATED TO THE LICENSE GRANTED HEREUNDER.

5. Indemnity

5.1 Infringement Indemnity

Salient indemnifies, defends, and holds Client harmless from and against any third-party claims, actions, or demands alleging that the Software infringes any United States patent, copyright, or other intellectual property right of such party. If use of the Software is permanently enjoined for any reason, this Agreement shall be deemed terminated as of the date of such permanent injunction.

5.2 Exceptions to Indemnity

Notwithstanding the provisions of Section 5.1 above, Salient shall not indemnify Client for any losses, liability, or damages arising out of, or incurred in connection with, infringement caused by (a) the combination of noninfringing items supplied by Salient with any items not supplied by Salient; (b) modification of the Software or Documentation by Client or by Salient in compliance with Client's designs, specifications, or instructions; (c) the direct or contributory infringement of any process patent by Client through the use of the Software; or (d) continued allegedly infringing activity by Client after Client has been notified of the possible infringement.

5.3 Condition to Indemnification

Should any claim subject to indemnity be made against Client, Client agrees to provide Salient with prompt written notice of the claim. Salient will control the defense and settlement of any such claim. Client agrees to cooperate with Salient and provide reasonable assistance in the defense and settlement of such claim. Salient shall not settle, compromise or in any manner voluntarily resolve any claim, suit, action or proceeding in such a manner as would admit or imply wrongdoing by or liability of Client without Client's prior written consent, to be withheld in Client's sole discretion, unless (a) the sole relief provided in connection with such settlement is monetary damages that are paid in full by Salient; (b) such settlement involves no finding or admission of any right of Salient or any third party or of any violation or breach by Client of any applicable laws, orders, contracts or governmental regulations; (c) such settlement has no effect on any other claims that may be made against Client; and (d) such settlement does not prejudice any right of Client.

6. Confidentiality

6.1 Scope of Confidential Information

"Confidential Information" means any information disclosed by or on behalf of a disclosing party ("Disclosing Party") to a receiving party ("Receiving Party"), either directly or indirectly, in writing, orally or by inspection of tangible objects (including without limitation documents, prototypes, samples, plant and equipment). Confidential Information also includes any reports, notes, summaries, abstracts, or drafts of Confidential Information or of oral presentations, reports or discussion referring to, describing, elaborating upon or otherwise relating to Confidential Information.

Confidential Information is expressly defined to include, without limitation, the Software and the Documentation. Confidential Information may also include, without limitation, (a) matters of a technical nature such as trade secret processes or designs, techniques, data, formulas, inventions (whether or not patentable), documentations and descriptions of products planned or being developed, and research subjects, methods and results; (b) matters of a business nature such as

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information about costs, margins, pricing policies, markets, sales, suppliers, customers, product plans and marketing plans or strategies; (c) other information of a similar nature that is not generally disclosed by Disclosing Party to the public; and (d) information expressly designated as “Confidential” or “Proprietary.” Confidential Information expressly includes any and all information derived from the Confidential Information. Any Confidential Information provided by Disclosing Party to a third party at the direction or request of Receiving Party shall be treated for the purposes hereof as having been provided to such third party by Receiving Party, and such deemed disclosure by Receiving Party shall be subject to all of the limitations and other provisions in this Agreement.

“Confidential Information” shall not include any information that: (a) is or becomes public knowledge through no fault of Receiving Party; (b) is in Receiving Party’s possession at the time of disclosure as evidenced by written records; (c) is rightfully received by Receiving Party from a third party having the right to disclose such information; or (d) is proven by written evidence to have been independently developed by Receiving Party without any reference to the Confidential Information. Confidential Information shall not be deemed to be public knowledge merely because any part of that information is embodied in general disclosures or because individual features, components or combinations thereof are now or become known to the public.

6.2 Confidentiality Requirements

Receiving Party will protect and safeguard the Confidential Information of Disclosing Party by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as it uses to protect its own confidential or proprietary information. Receiving Party will notify Disclosing Party in the event it becomes aware of any violation of this Section 6. At the termination of this Agreement and at the request of Disclosing Party, Receiving Party will promptly return all the Confidential Information (and any copies thereof) in its possession to Disclosing Party. Client shall refrain from using Salient’s Confidential Information to develop or produce a product which is similar to or imitates the Software or the Documentation. Client shall not modify, reverse engineer, or decompile the Software, or create derivative works based on the Software or the Documentation.

6.3 Limitation on Compelled Disclosure

In the event that Disclosing Party is unable to obtain a protective order or otherwise prevent disclosure of Confidential Information and Receiving Party or any of its representatives is legally compelled to disclose such information, Receiving Party and its representatives shall furnish only that portion of the Confidential Information that Receiving Party’s outside legal counsel advises it in a written opinion is legally required and will exercise commercially reasonable efforts to preserve the confidentiality of the remainder of the Confidential Information. In no event will Receiving Party or any of its representatives oppose any legal action by Disclosing Party to prevent disclosure of Confidential Information or to seek assurances that confidential treatment will be afforded the Confidential Information.

6.4 Specific Performance

Each party acknowledges that irreparable damage could occur to the other party in the event any of the provisions of this Section 6 were not performed in accordance with their specific terms or were otherwise breached. Accordingly, each of the parties shall be entitled to seek an injunction or injunctions to prevent breaches of the provisions of this Section 6, without the need to show actual damages, and to enforce specifically the terms and provisions hereof, without requirement of posting of a bond, in addition to any other remedy to which such party may be entitled at law or in equity. The rights, powers, and remedies of each party under this Section 6 are cumulative and not exclusive of any other right, power, or remedy which each party may have under any other agreement or by law.

7. *Export Controls*

The Software, the Documentation, and all underlying information or technology may not be exported or re-exported into any country to which the U.S. has embargoed goods, or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. Client shall not export the Software or Documentation or any underlying information or technology to any facility in violation of these or other applicable laws and regulations. Client represents and warrants that it is not a national or resident of, or located in or operating under the control of, any country subject to such export controls.

8. *General*

8.1 Assignment

Client may not assign, sublicense, or transfer Client's rights or delegate its obligations under this Agreement without Salient's prior written consent. This Agreement shall be binding upon the successors and assigns of the parties to this

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Agreement.

8.2 Entire Agreement

This Agreement constitutes the final and complete understanding between the parties with respect to the matters covered hereby and supersedes all, and cannot be contradicted or supplemented by any, prior or contemporaneous discussions, correspondence, agreements or understandings (whether written or oral) that relate in any manner to the subject matter hereof. The parties acknowledge that no representation, promise, inducement or statement of intention has been made by any party to this Agreement that is not embodied in this Agreement, and agree that no party shall be bound by, or liable for, any alleged representation, promise, inducement or statement of intention not set forth herein. This Agreement may be amended only by an agreement in writing executed by the parties.

8.3 Waiver

This Agreement may not be modified or amended except in a writing signed by an authorized officer of each party. The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

8.4 Notices

Except as otherwise provided in this Agreement, notices required to be given pursuant to this Agreement shall be effective when received, and shall be sufficient if given in writing, hand-delivered, sent by facsimile with confirmation of receipt, sent by First Class Mail, return receipt requested (for all types of correspondence), postage prepaid, or sent by overnight courier service and addressed (A) by Client to Salient at the address indicated herein, or at such other address as may be furnished by Salient to Client by written notice or (B) by Salient to Client at an address regularly used by Client for the conduct of its business.

8.5 Independent Contractor

Nothing in this Agreement shall be deemed to create an employer/employee, principal/agent, or joint venture relationship. Neither party shall have the authority to create any obligation, express or implied, on behalf of the other party.

8.6 Severability

If any term or provision of this Agreement or any application hereof shall be invalid, illegal or otherwise unenforceable, such term or provision, to the extent possible, shall be modified in such a manner as to be valid, legal and enforceable to preserve the intent of the parties. If such modification is not possible, such term or provision shall be severed from this Agreement. In either case, the validity, legality and enforceability of the remainder of this Agreement and any other application of such term or provision shall not be affected or impaired thereby. If, moreover, any one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to activity or subject, it shall be construed by limiting and reducing it so as to be enforceable to the extent compatible with the applicable law as it shall then appear.

8.7 Headings

The headings contained in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement, and shall not be referred to in connection with the construction or interpretation of this Agreement.

8.8 Attorney Fees

In the event of any dispute between the parties arising out of this Agreement, the prevailing party shall be entitled, in addition to any other rights and remedies it may have, to recover its reasonable attorney fees and costs.

8.9 Governing Law

This Agreement shall be construed in accordance with the law of the State of New York, USA, except as to its provision relating to the conflicts of laws or choice of law. The parties hereto agree that any action related to this Agreement shall be venued solely in Chemung County, New York, USA, and the parties hereby irrevocably submit to the jurisdiction and venue of such courts and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. The parties further agree that this Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.