

# Terms of Use

These Terms of Use are provided by Salient Corporation, a New York corporation with its principal office and place of business located at 203 Colonial Drive, Horseheads, NY 14845 (“Salient”), and govern all use of proprietary software of Salient (the “Software”) by a party that has not been granted a license for the Software by Salient (any such party being referred to as “User”). These Terms of Use are effective as of the date User first accesses the Software.

## **1. Limitation of Use**

User’s use of the Software shall be subject to such limitations as Salient may in its sole discretion provide. No license for continued use of the Software is provided to User and User’s use of the Software may be terminated by Salient at any time in its sole discretion. Salient owns and retains all right, title, and interest in the Software, the documentation related to the software (the “Documentation”), and any and all other related materials. Neither User nor any third party has any ownership rights of any description in the Software, Documentation, or any related materials. User shall not modify, reverse engineer, or decompile the Software, or create derivative works based on the Software or the Documentation. User shall neither distribute the Software or the Documentation to, nor allow access to the Software or the Documentation by, any third parties. User may not sell the Software or Documentation to any person. User shall further notify Salient if User becomes aware of any use of the Software or Documentation in violation of these Terms of Use. User shall retain all copyright and trademark notices on the Software and Documentation and shall take other necessary steps to protect Salient’s intellectual property rights.

## **2. No Warranties**

USER’S USE OF THE SOFTWARE IS AT USER’S OWN RISK.

THIS AGREEMENT EXPRESSLY EXCLUDES ALL 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.

## **3. Limitation of Liability**

SALIENT MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOFTWARE, DOCUMENTATION OR SERVICES OR THEIR CONDITION, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OR USE BY CLIENT. SALIENT SHALL NOT BE LIABLE FOR ANY (a) SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, ARISING FROM OR RELATED TO THE OPERATION OR USE OF THE SOFTWARE, SOFTWARE PRODUCTS AND SERVICES INCLUDING SUCH DAMAGES, WITHOUT LIMITATION, AS 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) CLAIMS MADE A SUBJECT OF A LEGAL PROCEEDING AGAINST SALIENT MORE THAN TWO YEARS AFTER ANY SUCH 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 PURSUANT TO THE TERMS OF THIS AGREEMENT.

## **4. Confidentiality**

“Confidential Information” means the Software, the Documentation, and any information relating to the Software and the Documentation that is not in the public domain. User agrees to hold the Confidential Information in strict confidence. User further agrees that even if the Confidential Information enters the public domain, it will not add to the public domain disclosure. During the course of this Agreement, and at all times afterward, User 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. User agrees not to reverse engineer any of Salient’s Confidential Information nor any products related to Salient’s Confidential Information.

User will protect and safeguard the Confidential Information of Salient 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

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Information as User uses to protect its own confidential or proprietary information. User will further notify Salient in the event it becomes aware of any violation of this Section 4.

At the request of Salient, User will promptly return all the Confidential Information (and any copies thereof) in its possession to Salient and will certify to Salient in writing that it has complied with this Section 4.

In the event that Salient is unable to obtain a protective order or otherwise prevent disclosure of Confidential Information and User or any of its representatives is legally compelled to disclose such information, User and its representatives shall furnish only that portion of the Confidential Information that User'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 User or any of its representatives oppose any legal action by Salient to prevent disclosure of Confidential Information or to seek assurances that confidential treatment will be afforded the Confidential Information.

User acknowledges that irreparable damage could occur to Salient in the event any of the provisions of this Section 4 were not performed in accordance with their specific terms or were otherwise breached. Accordingly, Salient shall be entitled to seek an injunction or injunctions to prevent breaches of the provisions of this Section 4, 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 Salient may be entitled at law or in equity. Salient's rights, powers, and remedies under this Section 4 are cumulative and not exclusive of any other right, power, or remedy which Salient may have under any other agreement or by law.

## **5. Indemnity**

User is responsible and indemnifies Salient for, and holds Salient and its officers, directors, employees, and affiliates harmless from and against, any and all 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 User or by Salient in compliance with User's designs, specifications, or instructions; or (c) continued allegedly infringing activity by User after User has been notified of the possible infringement.

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

## **6. 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. User 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. User 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.

## **7. General**

### 7.1 Waiver

The failure of Salient to enforce any provision of this Agreement shall not be deemed a waiver of the provisions or of the right of Salient thereafter to enforce that or any other provision.

### 7.2 Severability

If any term or provision of these Terms of Use 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

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enforceable to preserve the intent of the parties. If such modification is not possible, such term or provision shall be severed from these Terms of Use. In either case, the validity, legality and enforceability of the remainder of these Terms of Use 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 these Terms of Use 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.

### 7.3 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.

### 7.4 Governing Law

These Terms of Use 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 these Terms of Use shall be venued solely in Chemung County, New York, USA, and the parties hereby irrevocably submit to the jurisdiction and venue of the 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.

### 7.5 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.