

1.1. Terms of use

This Agreement will commence on the Effective Date and remain in effect for forty-five (45) days, unless one or more Orders are received and accepted by Magniforce, in which case it will remain in effect until there is no Order or Additional Order in effect, except where this Agreement is terminated earlier as provided for herein. Licensee's right to Use the Licensed Materials will commence upon the Order Effective Date of an Order and will continue for the Initial Term, as specified on the Order (the "Initial Term"). After the Initial Term, the Order will automatically renew for consecutive periods as described in the Order (each a "Renewal Term"), unless either party provides notice of intent to not renew at least sixty (60) days prior to the end of the Initial Term or any Renewal Term. Magniforce may modify the terms of this Agreement effective for any Renewal Term by written notice at least ninety (90) days prior to the commencement of the Renewal Term for which the modification will be effective. As used in this Agreement, "Term" means the Initial Term and any Renewal Term.

1.2. Ownership.

Licensee is not acquiring any right or interest in the Licensed Materials except the license to Use the Licensed Materials for the Term on and subject to the terms of this Agreement. Magniforce reserves all rights not expressly granted to Licensee and retains title and full ownership of the Licensed Materials and all intellectual property rights therein, under all applicable laws of the United States and any other applicable state, federal, or foreign law. Magniforce is not obligated to provide, and Licensee acquires no right of any kind with respect to, any source code for the software elements of the Licensed Materials. Except as expressly permitted by this Agreement, Licensee may not: (a) sublicense, transfer, or otherwise assign its rights in the Licensed Materials to any third-party nor allow any third-party to access or use the Licensed Materials; (b) modify, create derivative works of, translate, reverse engineer, de-compile, or disassemble the Licensed Materials or the software elements of the Licensed Materials to develop any other computer program or for any other reason; or (c) copy the Licensed Materials or the software elements of the Licensed Materials, in whole or in part, without the prior written consent of Magniforce. The original and all copies of the Licensed Materials and the software elements of the Licensed Materials remain the sole property of Magniforce, subject to all of the confidentiality and other restrictions set forth in this Agreement. Licensee must retain all legends relating to copyright, trademarks, patents, or confidentiality on all copies of the Documentation or any print of a screen display from the Licensed Materials. Licensee acknowledges that Magniforce may analyze Licensee's usage of the Licensed Materials for product support, product development, and administrative purposes.

1.3. Adding Authorized Users.

Licensee may increase or decrease the number of Authorized Users only by requesting a quote from Magniforce and submitting an Additional Order. The Service Fee for the additional Authorized Users, and the term of the Additional Order shall be as specified in the Additional Order.

1.4. Data.

- (a.) Magniforce does not own any data, information, or material that Licensee submits to the Service in the course of using the Service ("**Licensee Data**"). Licensee shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Licensee Data.
- (b.) It is important for customers to develop a routine data backup strategy as part of their overall data management and security model. Even with the best of intentions, users and administrators have been in situations where they have either deleted large amounts of data, or have modified records, only to later realize that a mistake was made. Your organization can generate backup files of your data on a monthly basis. You can export all your organization's data into a set of comma-separated values (CSV) files.

1.5. Transfer of Rights.

Magniforce agrees that upon the occurrence of a Release Event, (1) Customer shall immediately acquire all rights of, and from, Magniforce to transact, engage, and negotiate with Salesforce or any service provider of Magniforce necessary to effectuate the continued use and operation of the Licensed Materials; and (2) Magniforce shall fully cooperate with and assist Customer with providing Customer, Salesforce, or any third party any required documentation, consents, authorization, or approvals needed to effectuate Customer's rights in this Section 1.8. For the avoidance of doubt, nothing in this Section 1.8 shall operate as a release or assignment of any duties, liabilities, or obligations of Magniforce to Customer.

2.0 LIMITED WARRANTIES AND REMEDIES

2.1. Warranties.

Magniforce warrants to Licensee that:

- (a.) The License granted in Section 1.1 and the Service, when used as permitted under this Agreement will be under warranty and responsibility of Magniforce, through the inflorens product development team. Magniforce shall provide the Service outlined herein with promptness, due care and in the best interest of the Customer, as well as in accordance with all applicable laws and good industry practices.
- (b.) In the event of any custom development performed as an extension of the inflorens core service by Customer or Customer affiliated/hired Contractor, the inflorens product development team will make their best effort to provide support in resolution of issues as they may be presented as a result of such custom development.
- (c.) Magniforce will use commercially reasonable efforts to cause the Service to be available at least 99.9% of the time during each month, excluding Excusable Downtime ("Uptime Objective"); Real-time performance of the Salesforce servers upon which our SaaS is hosted can be accessed at <https://trust.salesforce.com>
- (d.) Magniforce has all rights, power, and authority necessary to enter into this Agreement, to act as a reseller of the Salesforce products and services under this Agreement to Magniforce during the Term, and to provide the Licensed Materials to Licensee, and the ~~Licensee~~ Materials do not violate or infringe the intellectual property rights of any third party.
- (e.) The Service does not contain any computer code, other than necessary to enforce licensing terms, that is intended to (i) disrupt, disable, harm, or otherwise impede in any manner, the operation of Licensee's software, firmware, hardware, computer systems or network (sometimes referred to as "viruses" or "worms"), (ii) permit unauthorized access to Licensee's network and computer systems (sometimes referred to as "traps", "access codes" or "trap door" devices), or any other similar harmful, malicious or hidden procedures, routines or mechanisms which could cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with Licensee's operations.
- (f.) Magniforce will strictly adhere to the requirements and obligations of Confidentiality, as contained in Section 6.0.
- (g.) The parties acknowledge that performance by Magniforce is subject to regulatory examination and oversight (including by Customer's regulators) to the extent required by applicable law. Customer may terminate this Agreement when directed to do so by its regulators, without being subject to further Service Fees beyond termination. To the extent available, Magniforce agrees to provide the following to Customer on request, not more frequently than annually: (a) a copy of its most recent annual financial statements for the past 2 years; (b) a copy or summary of its most recent disaster recovery policy; (c) a summary of its most recent information security policy; (d) certificates of insurance with respect to its then current coverages for professional services and/or errors and omissions liability, general commercial liability, and information

technology and/or cyber insurance; (e) a copy of any third party audit reports, including but limited to a

SOC, SSAE, or similar report (complete with Description of Tests of Controls and Results), if performed; and (f) any other information that Customer may reasonably request. In addition, Magniforce grants Customer the right, but not the obligation, to perform an on-site audit of Magniforce's operations, at Customer's sole cost, no more frequently than once a year, at a mutually acceptable date and time. The parties do not intend for Magniforce to: (i) have any interaction with Customer's clients' members or consumers ("Members"); or (ii) receive any complaints from Customer's Members.

- (h.) Magniforce employees, subcontractors, agents, and any other person or persons accessing Confidential Information on its behalf are reliable and trustworthy and have received the required training on the Privacy Regulations, and it and anyone acting on its behalf will process Personal Information in compliance with the terms of this Agreement and all applicable Privacy Regulations.
- (i.) Magniforce will take appropriate technical and organizational measures to prevent the unauthorized or unlawful processing of Personal Information and the accidental loss or destruction of, or damage to, Personal Information, and ensure an appropriate level of security.

THE WARRANTIES SPECIFIED IN THIS SECTION 2.1 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. MAGNIFORCE DISCLAIMS ALL OTHER WARRANTIES REGARDING THE LICENSED MATERIALS, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT. MAGNIFORCE DOES NOT WARRANT THAT THE SERVICE WILL BE ERROR FREE, MEET LICENSEE'S SPECIFIC NEEDS, OR THAT USE OF THE SERVICE WILL BE UNINTERRUPTED.

2.2. Remedy for Breach.

If any of the warranties specified in Section 2.1 are breached during the Term of this Agreement:

1. Licensee will promptly notify Magniforce of the breach and any associated details reasonably requested by Magniforce in its attempt to remedy the nonconformity with the warranties in Section 2.1.
2. Magniforce will diligently and in good faith attempt to correct the reported nonconformity by repairing or modifying the Service within a commercially reasonable period of time, not to exceed thirty (30) days.
3. If Magniforce is unable to cure the reported nonconformity by repairing or modifying the Service, Licensee may elect to terminate its right to use the Service whereupon, Magniforce shall issue Licensee a service credit in an amount equal to the unused portion of the Service Fee paid to Magniforce for the unexpired portion of the then current Term, and Licensee shall owe no Service Fee for the period following termination.

2.3. Indemnification – Limitation of Liability.

- (a.) Subject to the terms and limitations contained herein, Magniforce shall indemnify, defend, and hold harmless Licensee and its officers, directors, and employees from and against any and all losses, liabilities, damages and expenses (including without limitation reasonable attorneys' fees) arising out of or related to (i) any claim arising from Magniforce's right to License the Service being granted to Licensee; (ii) any claim that the Licensed Materials infringe, misappropriate, or otherwise violate any patent, or a copyright, trade secret, trademark or other proprietary or intellectual property right of a third party (an "IP Claim"); (iii) any claim relating to death, personal injury, or property damage caused by Magniforce's negligence or willful misconduct while performing services on Licensee's premises; and, (iv) a breach by Magniforce of any representation, warranty, covenant, or obligation of Magniforce under this Agreement, and (v) any action or failure to take an action or more culpable act or omission (including recklessness or willful misconduct) in connection with the performance or nonperformance of any services or other activity required to be performed by or on behalf of Magniforce. As used in this Agreement, "Claim" means any of the stated grounds for indemnification itemized above in (i) through (v) of this Section 2.3. Customer shall promptly notify Magniforce of any such Claim, granting Magniforce the sole control over the defense and settlement of the Claim, and cooperating with Magniforce in the defense of the Claim. Customer's failure to promptly notify Magniforce of any Claim will not relieve Magniforce of its obligations under this Section 2.3 except to the extent that Magniforce can demonstrate that it has been materially prejudiced as a result of such failure.

Licensee will have the right to participate with Magniforce in the defense or appeal of any Claim, at Licensee's option and at Licensee's own expense, but Magniforce will have sole control and authority with respect to any such defense, compromise, settlement, appeal, or similar action, provided that Magniforce obtains Licensee's prior written consent to any settlement that (a) does not contain an unconditional release of claims against Licensee, (b) requires Licensee to make any admission of fault or pay any amounts in connection with such settlement, or (c) otherwise adversely affects the rights of Customer. If an IP Claim, as stated above in (ii) of this Section 2.3, is commenced against Licensee or is in the judgment of Magniforce likely or Licensee's Use of the Licensed Materials is enjoined, Magniforce may, at Magniforce's option, (a) modify or replace the Licensed Materials so that the Licensed Materials perform comparable functions without infringement; or (b) obtain a royalty-free license for Licensee to Use the Licensed Materials; or if neither alternative (a) or (b) is available to Magniforce on commercially reasonable terms, Magniforce may terminate this Agreement upon a refund to Licensee of the amount of the prepaid Service Fee paid to Magniforce for the unexpired portion of the then current Service Term.

- (b.) Notwithstanding anything to the contrary contained in this Agreement, (i) Magniforce shall not be obligated for any Claims and related losses, liabilities, damages and expenses (including without limitation reasonable attorneys' fees) arising out of or related to (1) the gross negligence or more culpable act or omission (including recklessness or willful misconduct) of Licensee, (2) the bad faith failure of Licensee to comply with any of its obligations under this Agreement, or (3) the use of the Licensed Materials by Licensee in any manner that does not conform with the usage requirements of this Agreement, and (ii) Magniforce's aggregate indemnification obligations under this Agreement shall not exceed the amount of five times (5x) the then trailing twelve-month annual "Magniforce Total Fee", defined as any and all fees and charges, whether for design, set up, implementation, or for recurring Transaction Fees or License Fees for License Use as specified in the Sales Order, charged by Magniforce to Licensee under this Agreement. In the event that a Claim is asserted before there is a trailing twelve-month period of usage under this Agreement, then an approximation of what the annual Magniforce Total Fee is reasonably predicted to be, based on past experience and fees contained in this Agreement, shall be utilized in the five (5) times calculation to determine the limit of liability. Further, any payments by Magniforce pursuant to this Section 2.3 are limited to the amount of any Claims and related losses, liabilities, damages and expenses (including without limitation reasonable attorneys' fees) that remains after deducting any insurance, contribution or other similar payments received by Licensee in respect of any Claims.

2.4. Insurance,

Magniforce will carry the insurances as applicable from time to time relevant to a contract. The Insurances will be workers Insurance and the like as applicable.

3.0 MAINTENANCE AND SUPPORT

3.1. Scope of Services.

In consideration of the Service Fee, Magniforce will furnish Maintenance and Support Services ("Support Services") as follows:

- (a.) **Technical Support.** Magniforce will provide the Licensee Representatives access to its technical support personnel between the hours of 9:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday, excluding national holidays. Technical Support can be reached by e-mailing Magniforce at support@inflorens.com. Technical Support requested outside of normal working hours will be serviced commencing on the next scheduled working day.
- (b.) **Error Correction.** Magniforce will keep the Service performing in all material respects and will correct verifiable and reproducible Errors related to the Service when reported to Magniforce in accordance with Section 3.4.
- (c.) **Minimal Interruptions.** Magniforce will perform the Support Services in a manner that minimizes interruptions in the availability or functioning of the Service.
- (d.) **New Upgrades & Updates.** Magniforce may, from time to time, issue new Upgrades or Updates and will make available to Licensee such Upgrade or Update promptly after Magniforce makes such Upgrade or Update commercially available.
- (e.) **Support for Current Release.** Magniforce will provide Maintenance and Support Services only for the current commercially available Upgrade or Update of the Service being licensed by Licensee (the "Current Release") and only such that the Services and the Current Release work with the then-current version of Safari, Mozilla Firefox, and Google Chrome Internet browsers.
- (f.) **Managed Hosting.** Magniforce will manage the services and monthly fees for Salesforce on behalf of Licensee. In the event an Order does not include SaaS as included in service fee user license pricing, charges, if any, will be billed in accordance with an Order, adjusted for any price increases, for the services in effect for the pay period. Hosting fees can increase over time with additional system load such as data and files storage space, if a fee increase is incurred prompt notice will be given to the Licensee.

3.2. Excluded Services.

Support Services exclude the following:

- (a.) **New Modules.** Magniforce may, from time to time, offer New Modules to its Licensees for an additional charge.
- (b.) **Tier 1 Support.** Support Services does not include Tier One Support services unless separately contracted. Tier One Support is defined as the primary mechanism for user administration and support and platform parameter configuration and process oversight and management, and includes:
 - i. User credential management – create new users, disable user accounts, re-enable user accounts, assign users the appropriate security roles, profiles and configure users for Single Sign-On
 - ii. User training for the Magniforce platform ("inflorens") – train all internal and vendor personnel new users, train all users as needed on changes associated with each upgrade or update
 - iii. User coaching – interact with users as appropriate to enhance their experience by coaching on tips and aids available to improve productivity and utility
 - iv. User communication – a notice of upcoming platform events such as a planned outage, notice of and updates to any unplanned outage or service impairments, and upcoming platform upgrades and updates
 - v. User experience management – the configuration of platform and system parameters to manage the user experience

- vi. User support – take in all user tickets and requests, triage each ticket/request, communicate answers and solutions back to the user, and as needed, escalate tickets to Magniforce for higher tier support; evaluate all feature requests coming from users, manage through an internal approval process, then transmit to Magniforce for evaluation
- vii. Import support – execute data imports for users who are not granted import privileges, including any data cleanup
- viii. Integration oversight – monitoring of integrations to verify that all integrations are operational
- ix. Process oversight – monitoring of imports, exports, report, notification, and HTTP call queues

- (c.) **Customization.** Licensee requests for customization of the Service or services such as special integration, special reports, rule writing, and similar services, if provided, would be provided pursuant to the terms of an Order.
- (d.) **Back-Level Support.** Magniforce, at Licensee's request, may use its commercially reasonable efforts to maintain versions of the Service prior to the Current Release, subject to an additional charge, and subject to availability of Magniforce technical support staff. Back level support shall be Consulting services and are subject to Section 3.6 of this Agreement.
- (e.) **Other Exclusions.** Any problem resulting from: (i) the misuse, improper use, unauthorized alteration, or

damage of the Service; (ii) modifications in any version of the Service not made or authorized by Magniforce; (iii) combination of the Service with such other programming or equipment to the extent such combination has not been approved by Magniforce, or (iv) errors in any version of the Service other than the Current Release. Magniforce may, in its discretion with notice to Licensee, bill Licensee at Magniforce's current rates for charges and expenses for time or other resources provided by Magniforce to diagnose or attempt to correct any problem ~~resulting~~ from any of the exclusions described in this Section (e.).

3.3. Cooperation of Licensee.

Licensee agrees to notify Magniforce promptly following the discovery of any Error. Further, upon discovery of an Error Licensee agrees if requested by Magniforce to:

- (a.) **Error Reproduction.** Cooperate with Magniforce to reproduce the Error, and
- (b.) **Error Observation.** Provide screen shots or initiate a screen sharing session that will permit Magniforce personnel to observe the Error in Licensee's network environment.

3.4. Technical Support Procedures.

- (a.) **Events.** Licensee shall report System problems ("Events") to Magniforce by submitting an email to support@infloovens.com. Events are defined as system outages or other problems, rather than desired system enhancements.
- (b.) **Errors not Caused by the Service.** If Magniforce reasonably believes that a problem reported by Licensee may not be due to an Error in the Service, Magniforce will so notify Licensee, and Magniforce shall not proceed further, unless mutually agreed to by the parties. In the event that a problem is diagnosed and determined to NOT be due to an Error in the Service, Magniforce may bill Licensee at its then current rates for the time and expenses that Magniforce engineers spend in the diagnosis or cure of said problem.

3.5. Licensee Responsibilities.

Upon the execution of each Order, Licensee shall designate two individuals as the representatives of Licensee (the "Licensee Representatives"), whose names are set forth on each Order, and who shall be authorized to make decisions, approve plans, grant requests on behalf of Licensee, and receive notices from Magniforce. Licensee hereby authorizes Magniforce to rely on all communications from and decisions of the Licensee Representatives.

3.6. Training and Consulting Services.

If so indicated on an Order, Magniforce will provide to Licensee training services ("Training") and/or the consulting services identified on a Statement of Work attached to the Order and executed by Licensee and Magniforce ("Consulting"). Training and Consulting may also be referred to as "Professional Services". Magniforce will remain in an independent contractor relationship to Licensee at all times, and neither Magniforce nor any employee or subcontractor of Magniforce will be, or will be deemed to be, an employee or agent of Licensee.

Magniforce warrants that Professional Services shall be performed in a commercially reasonable manner by qualified personnel, and that Consulting will be performed in conformity with the terms of the applicable ~~Statement of~~ Work and all applicable law.

THIS SECTION 3.6 STATES MAGNIFORCE'S ENTIRE OBLIGATION TO LICENSEE AND LICENSEE'S EXCLUSIVE REMEDY FOR BREACH OF THE WARRANTY IN THIS SECTION 3.6.

4.0 SERVICE FEE, PAYMENTS, SERVICES

4.1. Service Fees.

Licensee agrees to pay to Magniforce all undisputed Service Fees for the Service and all undisputed fees for Professional Services ("Professional Services Fees") as specified on each Order. Any Professional Services for which the fees are not set forth in an Order will be paid for at Magniforce's then prevailing time and material rates. Except as otherwise provided in an Order, Professional Services Fees will be charged at Magniforce's standard rates in effect when the ~~Professional~~ Services are performed.

4.2. Payment Terms.

Unless Magniforce otherwise agrees in writing, all amounts are quoted and billed in US Dollars (USD). Invoices are payable in full without deduction or setoff, in US Dollars on Net 30 Day terms (i.e., within 30 days of receipt of said invoice) or such later date as may be specified in the invoice (the "Due Date"). Interest shall accrue from the Due Date on all undisputed amounts unpaid more than 30 days after the Due Date at the rate of one percent (1%) per month. If Licensee believes an invoice or charge is incorrect, Licensee must contact Magniforce in writing within 60 days of the receipt of the invoice or charge to be eligible to receive an adjustment or credit.

4.3. Taxes.

If applicable, Licensee is responsible for, and must pay, any and all governmental, federal, state, or local taxes (other than taxes based on Magniforce's income), including sales taxes imposed in connection with the license of the Service, including, without limitation, to the extent that Licensee's Authorized Users are located in a state or locality other than that referenced in the "Ship To" address on any applicable Order. Licensee will indemnify Magniforce and hold Magniforce harmless from and against any such taxes and will promptly reimburse Magniforce for the amount of any taxes that Magniforce is required to pay as a result of Licensee's failure to pay such amount; provided that it is Magniforce's obligation to charge and withhold the applicable sales tax and Licensee shall not be liable for any penalties, fees or interest resulting from Magniforce's failure to do so.

4.4. Verification of Usage.

Magniforce reserves the right to verify that Licensee's Use of the Service has not exceeded the usage permitted under all of Licensee's Orders. If Magniforce determines that Licensee's Use of the Service has exceeded that specified under all of Licensee's Orders, Magniforce shall so notify Licensee in writing, and Licensee shall submit an Order for sufficient additional usage to establish compliance with the terms of this Agreement within thirty (30) days after receipt of the Magniforce's written notice.

5.0 LIMITATION OF LIABILITY

5.1. Exclusion of Damages.

EXCEPT AS OTHERWISE PROVIDED IN SECTION 5.2, IN NO EVENT WILL EITHER PARTY, ITS SUBSIDIARIES OR ITS DIRECTORS, OFFICERS, EMPLOYEES OR AFFILIATES BE LIABLE TO THE OTHER PARTY, ITS SUBSIDIARIES OR ITS DIRECTORS, OFFICERS, EMPLOYEES OR AFFILIATES FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOST REVENUE, BUSINESS INTERRUPTION, LOSS OF DATA, OR LOSS OF USE, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES, IN ANY WAY RELATED TO THIS AGREEMENT, THE PERFORMANCE OF ANY TRAINING SERVICES PURSUANT TO THIS AGREEMENT, OR USE OF THE SERVICE, WHETHER IN AN ACTION IN CONTRACT, BREACH OF WARRANTY OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF, OR COULD HAVE REASONABLY FORESEEN, THE POSSIBILITY OF SUCH DAMAGES.

5.2. Exceptions.

The exclusions and limitations in Section 5.1 shall not apply to:

- (a.) Losses arising out of or relating to a party's failure to comply with its obligations under Section 6, or its intellectual property obligations;
- (b.) A party's indemnification obligations;
- (c.) Losses arising out of or relating to Magniforce's unauthorized suspension, termination, or disabling of the Services in breach of this Agreement;
- (d.) Losses arising out of or relating to a party's gross negligence or more culpable conduct, including any willful misconduct or intentional wrongful acts;
- (e.) Losses for death, bodily injury, or damage to real or tangible personal property arising out of or relating to a party's negligent or more culpable acts or omissions;
- (f.) Losses to the extent covered by a party's insurance;
- (g.) Losses arising from or relating to a party's violation of Law; or
- (h.) A party's obligation to pay attorneys' fees and court costs under this Agreement.

6.0 CONFIDENTIALITY

6.1. Confidential Information.

Each recipient of Confidential Information (the "Recipient") agrees that it will not disclose, provide, or otherwise make available any Confidential Information of the other party (the "Disclosing Party") during the term of this Agreement and for a period of five (5) years thereafter, and in the case of Confidential Information that constitutes a trade secret under applicable law, for as long as such Confidential Information remains a trade secret. Furthermore, Confidential Information that is also considered Personal Information remains subject to the non-disclosure requirements of this Section for as long as they remain protected by said Privacy Regulations. Recipient will use the same care and discretion to avoid disclosure of Confidential Information as it uses with its own similar information that it does not wish disclosed, but in no event less than a commercially reasonable standard of care. In addition, each Recipient agrees that it will not:

- (a.) **Use Confidential Information Beyond Scope.** Use the Disclosing Party's Confidential Information for any purpose beyond the scope of this Agreement;
- (b.) **Copy or Disclose Confidential Information.** Copy any part of the Disclosing Party's Confidential Information or disclose any part of the Disclosing Party's Confidential Information to any person other than Recipient's employees, vendors, or consultants who need the Disclosing Party's Confidential Information to perform their duties;
- (c.) **Authorize the Copy or Disclosure of Confidential Information.** Authorize or permit any such employee or consultant to use or disclose any part of the Disclosing Party's Confidential Information in violation of this Agreement; or
- (d.) **Reverse Engineer, De-compile, or Disassemble Confidential Information.** Neither reverse engineer, de-compile, or disassemble any of the Disclosing Party's Confidential Information nor use any of the Disclosing Party's Confidential Information for any purpose other than the provision or use of the Service.

6.2. Personal Information Obligations of Magniforce.

- (a) Magniforce will only process, retain, use, or disclose the Personal Information to the extent, and in such a manner, as is necessary for the purposes in accordance with this Agreement. Magniforce will not process, retain, use, or disclose the Personal Information for any other purpose or in a way that does not comply with this Agreement or the Privacy Regulations. Magniforce must promptly notify Customer if, in its opinion, the Customer's instruction would not comply with the Privacy Regulations.
- (b) Magniforce must promptly comply with any Customer request or instruction requiring Magniforce to amend, transfer, or delete Personal Information, or to stop, mitigate, or remedy any unauthorized processing.
- (c) Magniforce will maintain the confidentiality of all Personal Information, will not sell it to anyone, and will not disclose it to third parties. If a law requires Magniforce to process or disclose Personal Information, Magniforce must first inform the Customer of the legal requirement and give the Customer an opportunity to object or challenge the requirement, unless the law prohibits such notice.
- (d) Magniforce will reasonably assist the Customer with meeting the Customer's compliance obligations under the Privacy Regulations.
- (e) Magniforce must promptly notify Customer of any changes to the Privacy Regulations that may adversely affect Magniforce's performance of this Agreement.
- (f) Magniforce will only collect Personal Information for the Customer using a notice or method that the Customer pre-approves in writing, which contains an approved data privacy notice.
- (g) Magniforce will limit Personal Information access to:
 - (i) Those employees who require Personal Information access to meet Magniforce's obligations under this Agreement;
 - (ii) The part or parts of the Personal Information that those employees strictly require for the performance of their duties;
- (h) Magniforce ensure that all employees:
 - (i) Are informed of the Personal Information's confidential nature and use restrictions and are obliged to keep the Personal Information confidential;

- (ii)
- (iii) Have undertaken training on the Privacy Regulations relating to handling Personal Information and how it applies to their particular duties; and
- (iv) Are aware both of Magniforce's duties and their personal duties and obligations under the Privacy Regulations and this Agreement.
- (v) Magniforce will take reasonable steps to ensure the reliability, integrity, and trustworthiness of all of Magniforce's employees with access to Personal Information.

6.3. Regulated Information.

Recipient shall comply with all requirements of the Privacy Regulations reasonably known to be applicable to the Regulated Information portions of the Confidential Information actually received by the Recipient including all reporting, audit, access, third party disclosure and onward transfer obligations and restrictions therefor, if any are so applicable. Recipient acknowledges that the Privacy Regulations may prohibit or render ineffective some or all of the exclusions otherwise available under Section 6.3.

6.4. Exclusions.

Nothing in Section 6.0 shall be construed to restrict disclosure of Licensee Data via the Service to Authorized Users. The Recipient's obligations under this Agreement will not apply to any portion of the Disclosing Party's Confidential Information that:

- (a.) **Public Domain Information:** At the time of disclosure to Recipient, was in the public domain or subsequently becomes a part of the public domain through no breach of this Agreement;
- (b.) **Pre-Existing Possession of Information:** Recipient had in its lawful possession at the time of disclosure by the Disclosing Party, as established by written documentation in existence at that time, and that was not acquired directly or indirectly from the Disclosing Party or with knowledge of confidentiality restrictions;
- (c.) **Subsequent Lawful Acquisition of Information:** Recipient subsequently acquires by lawful means from a third-party who is under no obligation of confidentiality or non-use owed to Disclosing Party; or
- (d.) **Independent Development of Information:** Recipient subsequently independently develops without any use of or reference to the Disclosing Party's Confidential Information.

6.5. Disclosure Pursuant to Legal Process.

If Recipient is legally compelled to disclose any portion of the Disclosing Party's Confidential Information in connection with a lawsuit or similar proceeding or to any governmental agency, to the extent legally permitted to do so, Recipient will give Disclosing Party prompt notice of that fact, including in its notice the legal basis for the required disclosure and the nature of the Disclosing Party's Confidential Information that must be disclosed.

Recipient will cooperate fully with the Disclosing Party in obtaining a protective order or other appropriate protection relating to the disclosure and subsequent use of the Disclosing Party's Confidential Information. Recipient will disclose only that portion of the Disclosing Party's Confidential Information that is legally required to be disclosed.

6.6. Enforcement.

Both Parties acknowledge and agree that the release of Confidential Information in violation of this Agreement may cause irreparable harm for which the Disclosing Party may not be fully or adequately compensated by recovery of monetary damages. Therefore, should Recipient breach its obligations under this Section 6.0, Recipient agrees that Disclosing Party will be entitled to enforce its rights under this Section 6.0 by seeking appropriate equitable relief including a temporary restraining order and an injunction, without being required to post bond or other security, in addition to any other remedy available at law or in equity. The prevailing party in any such action shall be entitled to its court costs and reasonable attorneys' fees, in addition to any relief the court deems just. No delay or failure by Disclosing Party in exercising any right under this Agreement will be construed to be a waiver of that right or of the right to assert a claim with respect to any future breach of this Agreement.

6.7. Return of Confidential Information.

Upon request by the Disclosing Party, the Recipient will return the Disclosing Party's Confidential Information, including all copies of the Disclosing Party's Confidential Information, and all abstracts, summaries or documents produced using the Disclosing Party's Confidential Information, or, if so directed by the Disclosing Party in writing, the Recipient will destroy all copies of the Disclosing Party's Confidential Information (including abstracts, summaries or documents produced using the Disclosing Party's Confidential Information) and will certify to the Disclosing Party in writing that all copies, abstracts, summaries, and documents have been destroyed.

6.8. Data Security.

Magniforce must at all times implement appropriate technical and organizational measures designed to safeguard Customer's Confidential Information against unauthorized or unlawful processing, access, copying, modification, storage, reproduction, display, or distribution, and against accidental loss, destruction, unavailability, or damage. Magniforce will immediately notify Customer if it becomes aware of any advance in technology and methods of working, which indicate that the parties should adjust their security measures. Magniforce must take reasonable precautions to preserve the integrity of any Customer Confidential Information it processes and to prevent any corruption or loss of the Confidential Information, including but not limited to establishing effective back-up and data restoration procedures. Magniforce will keep detailed, accurate, and up-to-date records regarding any processing of Customer's Confidential Information it carries out for Customer, including but not limited to, the access, control, and security of the Confidential Information, approved subcontractors and affiliates, the processing purposes, and any other records required by the applicable Privacy Regulations.

6.9. Security Breaches.

Immediately following discovery of any Security Breach or compromise of the security, confidentiality, or integrity of Personal Information, Magniforce shall immediately use its best efforts to stop such breach, compromise, violation, or unauthorized access, and within 24 hours notify Customer in writing of such confirmed occurrence that includes a brief summary of the available facts, the status of current investigations, and if known, the potential number of individuals affected by the Security Breach. Immediately following any unauthorized or unlawful Personal Information processing or Security Breach, the parties will coordinate with each other to investigate the matter. Magniforce will reasonably cooperate with Customer in the Customer's handling of the matter, including (i) assisting with any investigation; (ii) providing Customer with physical access to any facilities and operations affected; (iii) facilitating interviews with Magniforce's employees, former employees, and others involved in the matter; and (iv) making available all relevant records, logs, files, data reporting, and other materials required to comply with Privacy Regulations or as otherwise reasonably required by the Customer. Magniforce agrees that it shall not communicate with any third party regarding the Security Breach, including but not limited to the media, vendors, consumers and Affected Persons regarding any security breach without the express prior written consent and approval of the content of the communication by the Customer. Customer has the sole right to determine (i) whether to provide notice of the Security Breach as required by applicable law or regulation or in Customer's discretion; and (ii) whether to offer any type of remedy to individuals affected by the Security Breach. Magniforce will pay all reasonable expenses associated with investigation of the Security Breach. Magniforce will also reimburse Customer for actual expenses the Customer incurs when responding to and mitigating damages, to the extent that Magniforce caused a Security Breach, including all costs of notice and any remedy set out in this Section.

7.0 BREACH AND TERMINATION

7.1. Termination of Professional Services.

Licensee may terminate an Order for Professional Services by giving Magniforce thirty (30) days prior written notice. Promptly after receipt of such notice Magniforce shall inform Licensee of the extent to which performance has been completed through the date the termination will be effective, and collect and deliver to Licensee whatever work product then exists in the manner requested by Licensee. Licensee shall promptly pay for all Professional Services rendered through and including the effective date of termination in accordance with the terms of this Agreement and the applicable Order.

7.2. Service Termination.

- (a.) **Termination of Orders.** Subject to Section 7.3, including Section 7.3(c) below, Licensee may terminate an Order for the Service by giving Magniforce ninety (90) days prior written notice. Magniforce may terminate an Order for the Service (i) by giving Licensee one hundred eighty (180) days' notice, or (ii) if Licensee shall not pay when due any undisputed sum owed hereunder, and such non-payment continues for more than thirty (30) days after written demand by Magniforce.
- (b.) **Termination of Agreement.** Licensee may terminate this Agreement and all Orders hereunder by giving Magniforce ninety (90) days prior written notice. Licensee may terminate this Agreement and all Orders hereunder if Magniforce breaches this Agreement and fails to cure such breach within thirty (30) days after Magniforce receives written notice of such breach from Licensee. Magniforce may terminate this Agreement and all Orders hereunder if Customer or Licensee shall breach Section 1.0, Section 4.0, or Section 6.0 and fail to cure such breach within thirty (30) days after Customer receives written notice of such breach from Magniforce.

7.3. Effect of License Termination.

- (a.) **Termination of Orders.** Within thirty (30) days after the expiration of the Service Term or termination of an Order, Licensee must reduce its Use to achieve compliance with the usage permitted in any remaining Order or Orders or, if Licensee is party only to a single Order, cease all Use of the Service.
- (b.) **Termination of Agreement.** Termination of the Agreement terminates this Agreement and all Orders hereunder. Within thirty (30) days after the termination of this Agreement, Licensee must cease all Use of the Service.
- (c.) **No Refunds.** Except as expressly provided in this Agreement, the Service Fee is non-refundable.
- (d.) **Return of Data.** On termination of the License or this Agreement for any reason or the expiration of its term, Magniforce will securely return to Customer in the format and on the media reasonably specified by Customer all Customer's data (which includes Customer's Confidential Information), related to this Agreement and permanently destroy all Customer's Confidential Information in its, or its subcontractors' or agents', possession or control.

7.4. Survival.

The provisions of Sections 2.1-2.3, 5.0, 6.0, 7.3, 7.4, 8.0, and 9.0 of this Agreement will survive and continue in full force and effect notwithstanding the termination or expiration of this Agreement.

8.0 GENERAL PROVISIONS (Includes Terms of Use)

8.1. No Assignment.

Neither Party may assign or transfer its rights and obligations under this Agreement without prior written approval of the other.

8.2. Force Majeure.

Neither Party shall be in default by reason of any failure in performance of this Agreement if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control or foreseeability of such Party, including but not limited to, acts of God or of the public enemy, U.S. or foreign governmental acts in either a sovereign or contractual capacity, fire, flood, epidemic, restrictions, strikes, and/or freight embargoes.

8.3. No Waiver.

Any failure by either Party to detect, protest, or remedy any breach of this Agreement shall not constitute a waiver or impairment of any such term or condition, or the right of such Party at any time to avail itself of such remedies as it may have for any breach or breaches of such term or condition. A waiver may only occur pursuant to the prior written express permission of an authorized officer of the other Party.

8.4. Notices

All notices, communications, and deliveries under this Agreement (other than routine support calls) must be made in writing, sent via the United States Postal Service, registered or certified mail, or through a nationally recognized courier, where signature of addressee is required upon delivery, signed by the Party making the same, must specify the Section under this Agreement pursuant to which it is given or being made (if applicable), and will be given or made to the address(s) specified as the "Address for Notices" on the signature page to this Agreement.

8.5. Severability.

If any provision hereof is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, so that the remainder of that provision and all remaining provisions of this Agreement will continue in full force and effect.

8.6. Governing Law.

This Agreement and the rights of the Parties hereunder shall be governed by and construed in accordance with the laws of the State of Missouri, without regard to conflicts of laws provisions thereof. Any action arising under or in connection with this Agreement may be brought in any appropriate state court sitting in Fulton County, Georgia, or in any federal court sitting in the Northern District of Georgia (collectively, the “Permitted Courts”) and the Parties: (a) consent to the jurisdiction of the Permitted Courts in such actions and (b) agree not to plead or claim that such litigation brought in the Permitted Courts has been brought in an inconvenient forum. In any suit, arbitration, mediation, or other proceeding to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing Party will be entitled to recover reasonable attorneys’ fees. The Parties expressly exclude all application of the United Nations Convention on the International Sale of Goods to this Agreement.

8.7. Export.

Customer represents and warrants that all Licensees, Affiliates, and Contractors and their respective users are not (a) located in an embargoed country as designated by the Office of Foreign Asset Control of the Treasury Department (an “Embargoed Country”), or (b) listed on the prohibited persons list maintained by the Bureau of Industry and Security of the Department of Commerce (the “Prohibited Persons List”). Licensee shall not export or re-export, or allow the export or re-export of the Service or any copy, portion or direct product of the foregoing, in violation of any export laws, restrictions, national security controls or regulations of the United States or other applicable foreign agency or authority.

8.8. Entire Agreement.

This Agreement constitutes the complete understanding between the parties with respect to the subject matter of this Agreement and any Exhibits and Orders hereto, and supersedes all previous written or oral agreements, proposals, RFP responses, and representations. Additionally, the parties acknowledge that there are no contemporaneous side-letters, or oral or other arrangements that contradict, alter, or otherwise serve to modify any of the terms set forth in this Agreement. Licensee acknowledges and agrees that Licensee has not relied on the potential availability of any future product, functionality, or feature, or any statement or representation by Magniforce or its employees concerning the potential availability of any future product, functionality, or feature, in entering into this Agreement. The terms and conditions of this Agreement will control over any terms and conditions in any solicitation, request for proposal, proposal, purchase order, acknowledgment, or other written form. Licensee acknowledges that Magniforce objects to all pre-printed terms and conditions on, or attached to, Licensee’s purchase orders and that such pre-printed terms and conditions shall be of no force or effect. This Agreement may be modified only in a writing which expressly references this Agreement and is executed by both Parties to this Agreement. This Agreement may be executed in several counterparts, all of which taken together will constitute one single Agreement between the Parties.

8.9. Enforcement.

Both parties acknowledge that, in the event of either Party’s breach of this Agreement, the non-breaching Party may not have an adequate remedy in money or damages and will be entitled to seek an injunction against such breach from any court of competent jurisdiction. The non-breaching Party’s right to obtain injunctive relief shall not limit its right to seek further remedies.

8.10. Reference Account.

Customer agrees that Magniforce may include identification of Customer as a customer on Magniforce's website (www.inflorens.com) and in print material, provided that the identification of Customer is no more prominent than the identification of Magniforce's other customers and is otherwise consistent with Magniforce's practice of identifying its customers on Magniforce's website and in print materials as of the Effective Date. By mutual agreement, upon a successful implementation and Use of the Licensed Materials, Customer may be featured in a case study (in a form and format approved in advance and in writing by Customer) which may be published in an online or offline periodical, newspaper, journal, or other publication, and posted on Magniforce's website with case studies featuring other Magniforce customers.

8.11. Interpretation of Agreement.

The following rules of interpretation must be applied in interpreting this Agreement: (a) the section and subsection headings used in this Agreement are for reference and convenience only, and will not enter into the interpretation of this Agreement, (b) all references to Sections and Exhibits are to the Sections in this Agreement and Exhibits to this Agreement, as the case may be, (c) the provisions of the Exhibits are incorporated in this Agreement, and (d) as used in this Agreement, the term "including" will always be deemed to mean "including without limitation".

8.12. Non-Solicitation.

During the Term of this Agreement, and for a period of twelve (12) months thereafter, neither Party shall directly for itself, or indirectly by, through, or for others, solicit for employment, hire, or attempt to hire, or engage or attempt to engage as an independent contractor, any person that performs services pursuant to this Agreement or any statement of work issued pursuant to his Agreement or is otherwise or is materially involved in the Services contemplated by this Agreement. Nothing in this section shall preclude a Party from hiring personnel of the other Party (a) that respond to advertising or job postings directed at the general public or submit unsolicited resumes or (b) once such former employee or independent contractor has not been employed by such Party for at least six (6) months.

9.0 DEFINITIONS

9.1. Affiliate.

Affiliate means any entity directly or indirectly controlling, controlled by, or under common control with Customer, where "control" means ownership of at least 50% of the equity or beneficial interests of such entity or the right to vote for or appoint a majority of the board of directors or other governing body of such entity.

9.2. Authorized User.

Authorized User means any user account configured in the Service and enabled at any time during the month, including Integration Users, Full Users and Mobile Only Users (as such terms are defined in any Order) and specifically includes accounts associated with a specific person as well as administrative accounts used to enable integrations, notifications, or testing, unless otherwise described in an Order. As it relates to this Agreement, Authorized Users may be employees of Customer or of Customer's clients.

9.3. Confidential Information.

Confidential Information means all business or technical information of the disclosing Party that is not generally known to the public and that derives value from not being generally known, whether such information is disclosed orally or in writing. Confidential Information may include any customer lists, marketing plans, financial information, policies and procedures, products, business plans, sales positioning strategies, communication strategies, software, documentation, flow-chart, logic diagram, design proposal, screen shot, screen shot concept, algorithm, device, compilation of information, method, technique, or process. The Licensed Materials, the pricing and terms of this Agreement, and product roadmap of the Service constitute Confidential Information of Magniforce and its licensors. Licensee Data (including any and all information about or concerning Customer's Members) and Personal Information is also Confidential Information of Licensee.

9.4. Contractor.

Contractor means an independent contractor performing services for Licensee or an Affiliate.

9.5. Customization.

Customization means any modification or addition to the Service that changes its utility, efficiency, functional capability, or application, that is requested by Licensee and is not an Error Correction or a New Module. Customization is not included in Support Services and is subject to a separate charge.

9.6. Documentation.

Documentation means the on-line information and materials, relating to the Use of the Service made available to Licensee in connection with the Use of the Service.

9.7. Error.

Error means a program or logic error or other defect in the Service which causes the Service to operate incorrectly or otherwise not in conformity with the Documentation that can be reproduced or observed by Magniforce.

9.8. Error Correction.

Error Correction means either a modification or addition that, when made or added to the Service, brings the Service into conformity with its Documentation in all material respects or a procedure or routine that, when observed in the regular operation of the Service, avoids the practical adverse effect of such nonconformity.

9.9. Excusable Downtime.

Excusable Downtime means time that the Service is not available to Licensee because of (a) scheduled maintenance, (b) outages caused by misuse of the Service by Licensee, (c) outages caused by failure in Licensee's network, (d) failure of the Internet and/or public switched network, and (e) events that are beyond Magniforce's reasonable control.

9.10. New Module.

New Module means computer programs related to the Service which contains business logic not offered or contained in the then current version of the Service or that contains additional substantial functionality not offered or contained in the then current version of the Service. New Modules are not included in Support Services and are subject to a separate charge.

9.11. Party.

Party means Magniforce, Customer, or Licensee, individually, and “Parties” means Magniforce, Customer, and Licensee, collectively.

9.12. Person.

Person means any individual, general partnership, limited liability partnership, limited partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative, association, or any foreign trust or foreign business organization, and the heirs, executors, administrators, legal representatives, successors, and assigns of such Person where the context so permits.

9.13. Personal Information.

Personal Information means any information Magniforce processes for Customer that (a) identifies or relates to an individual who can be identified directly or indirectly from that data alone or in combination with other information in Magniforce’s possession or control or that Magniforce is likely to have access to, or (b) the relevant Privacy Regulations otherwise define as protected personal information.

9.14. Privacy Regulations.

Privacy Regulations means all applicable federal, state, and foreign laws and regulations relating to the processing, protection, or privacy of the Personal Information, including where applicable, the guidance and codes of practice issued by regulatory bodies in any relevant jurisdiction. This includes, but is not limited to, the Gramm-Leach-Bliley Act of 1999, California Consumer Protection Act (CCPA), the Securities and Exchange Act of 1934, and the European Union’s Directive on Data Privacy. These Privacy Regulations require, in addition, that the Parties shall maintain commercially reasonable physical, electronic and procedural safeguards to protect Confidential Information (including, without limitation, any nonpublic personal information about the Parties’ Members) to ensure its compliance with applicable state and federal laws and the regulations adopted by any federal regulatory agencies having jurisdiction over the Parties’ affairs.

9.15. Security Breach.

Security Breach means any act or omission that actually or potentially compromises the security, confidentiality, or integrity of Personal Information or the physical, technical, administrative, or organizational safeguards put in place to protect it. The loss of or unauthorized access, disclosure, or acquisition of Personal Information is a Security Breach whether or not the incident rises to the level of a security breach under the Privacy Regulations.

9.16. Upgrade.

Upgrade means a release of the Software underlying the Service which consists of a new version with substantial enhancements, added functionality or new features.

9.17. Update.

Update means a release of the Service which consists of minor corrections, bug fixes and enhancements without substantial added functionality or features and which is not an Upgrade.

Accepted and Approved as of the Effective Date:

Customer

Magniforce, Inc.

By: _____

By: _____

Name:

Name:

Title:

Address for Notices:

Attn:

Email:

With a copy to:

Address for Notices: