

Fruth Group - IT Services Division

Master Services Agreement (MSA)

Last modified: December 31, 2019

This Master Services Agreement ("Agreement") is between Fruth Group IT Services Division, a business unit of Fruth Group, Inc., an Arizona Corporation, with principal offices located at 4960 E. Beverly Rd., Phoenix, AZ, 85044, (herein after referred to as "**Provider**" or "**Fruth Group**") and the designated customer entity as defined on the Professional Services SOW (Statement of Work), Managed IT Services, Cloud Voice Services, Hosted Cloud Services, or other applicable Service Agreement, (herein after referred to as "**Client**"). The Agreement shall be in force as of the Effective Date as specified in the Agreement Overview table in the Executive Summary section of the associated Agreement.

Provider and Client (collectively referred to as the "**Parties**") agree as follows:

1. SERVICE

1.1. Scope of Services. Provider agrees to assist Client with services as set forth in the associated Agreement document(s), in addition to any Schedules or Addendums (if included), and as set forth in one or more applicable Terms of Service (each, its own "TOS," which all reside at <https://fruthgroup.com/legal/>) or Statements of Work (each, its own "SOW") that may be executed from time-to-time by both Parties (collectively, the "Services"). To be effective, each TOS and/or SOW may reference this Master Services Agreement and, when executed by both Parties, shall automatically be deemed a part of, and governed by the terms of this Agreement. Each TOS and/or SOW is enforceable according to the terms and conditions contained therein, and in the event of a direct conflict between the language of this Agreement and any TOS and/or SOW, the language of the TOS or SOW shall control, but only with respect to that particular TOS or SOW and the specific item in question. Provider shall perform all Services in accordance with the relevant best practices for the managed IT service provider industry, as well as those service levels explicitly described in any relevant Terms of Service and/or Statement of Work.

2. FEES AND CHARGES

2.1. Payment Terms. All payment due dates are indicated on the invoice. Credit card payments will be assessed a 3% processing fee with a minimum \$5.00 fee. Any payments received after the due date listed on invoice(s) will be considered past due. Past due balances shall be subject to late charges/interest on the unpaid invoice amount(s) until and including the date payment is received, at the rate of \$5.00 or 1.5% of the past due balance, whichever is greater. Client shall be liable for all reasonable fees and costs incurred in collection of past due balances including but not limited to collections fees, filing fees, attorney's fees, and court costs. Client account will be placed on Credit Hold when the status of an invoice has reached thirty (30) days past due, where Provider reserves the right to deactivate or suspend all Services until payment is received. If Client account is on Credit Hold for thirty (30) days, it is considered a material breach which may result in Default of Agreement per section 3.3.

2.2. Implementation Fee. One-time onboarding (MIS), activation (CVS), and provisioning (HCS) fees and any other installation or setup fees that may apply are specified on the associated Agreement / Quote / Sales Order / Statement of Work and vary by product and plan chosen. Such implementation fees will be billed out with the first month's service invoice and payment is required by the date indicated on the invoice.

2.3. Reinstatement Fee. Reinstating any Service deactivated or suspended for non-payment of fees may result in a

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reinstatement fee of up to \$100 per product family.

2.4. Labor Rates. For all Services provided outside of an Agreement or SOW or Out of Scope of Agreement (per applicable TOS), Client will be billed the corresponding hourly rate(s) below according to the type of work performed. Clients with an active recurring Managed IT Services Agreement with Provider will be billed at the Promotional Managed Agreement Resource Rates. Non-managed clients will be billed at then Standard / Market Resource Rates.

Resource Type / Work Type	Standard / Market Resource Rates	Promotional Managed Agreement Resource Rates	Example Service Type / Area Details
Technician	\$125 / hour	\$100 / hour	Basic Desktop, Application, & Peripheral Support
Analyst	\$150 / hour	\$125 / hour	Intermediate Desktop, Application, & Peripheral Support + Basic Network & Server Support
Specialist	\$175 / hour	\$150 / hour	Advanced Desktop & Application Support + Intermediate Network & Server Support
Engineer	\$200 / hour	\$175 / hour	Expert Desktop, Application, Network, & Server Support + Wireless, Security, & Design Services
Project Manager	\$150 / hour	\$125 / hour	Project Management & Coordination
CIO Services	\$300 / hour	\$250 / hour	Strategic Alignment of IT Systems with Business Objectives
After Hours & Holidays - Remote Support	1.5x resource rate	1.5x resource rate	Reactive remote support outside of Service Hours (per Agreement Overview) + Holidays*
After Hours & Holidays - On-site Support	2.0x resource rate	2x resource rate	Reactive on-site support outside of Service Hours (per Agreement Overview) + Holidays*

**Holidays include: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, Christmas Eve, Christmas Day, and New Year's Eve. If Holiday falls on a Saturday, Holiday observed on Friday before. If Holiday falls on a Sunday, Holiday observed on Monday after.*

Billing Terms:

Minimum 0.25 hours for Remote work; Minimum 1.00 hours for on-site, after-hours, and holiday work. Resource rates are always billed out in quarter (0.25) hour increments beyond the minimums. Above listed pricing is periodically

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reviewed and may be revised based on current market conditions. All rates listed above are subject to change at any time at Provider's sole discretion.

3. TERM

3.1. Auto-Renewal. Once the original term of any Agreement (as specified in the "Agreement Overview" section) has concluded, the Agreement will auto-renew and convert to month-to-month terms, at then standard market pricing as defined in the applicable TOS for the associated product line. It will continue to do so in perpetuity unless either party makes known their desire to renew/extend with a new Agreement, or to terminate the Agreement as indicated in "Without Cause" section 3.2.

3.2. Without Cause. After the initial contract term has concluded, either party may terminate the Agreement for any reason by providing the other party with thirty (30) days prior written notice. Both parties shall mutually agree upon the effective date of the termination. If either party terminates this Agreement, Provider will assist Client in the orderly termination of services, including timely transfer of the services to another designated provider. Client agrees to pay Service Provider the actual costs of rendering such assistance as well as any outstanding or prior unpaid balances that Client owes Provider at that time.

3.3. Default. In the event that one party (a "Defaulting Party") commits a material breach of a Service Agreement or a Statement of Work, the non-Defaulting Party shall have the right, but not the obligation, to immediately terminate the applicable Agreement or the relevant Statement of Work provided that (i) the non-Defaulting Party has notified the Defaulting Party of the specific details of the breach in writing, and (ii) the Defaulting Party has not cured the default within ten (10) business days following receipt of written notice from the non-Defaulting Party.

3.4. Contract Review. Provider reserves the right to periodically review any Services Agreement(s) and if deemed ineffective, Provider may terminate the Agreement at the Provider's sole discretion. In the event of such a termination, the Provider may or may not propose to Client, a new Agreement with different quantities, pricing, and/or terms in an effort to make the agreement fair and equitable based on then market rates/pricing for same or similar services.

3.5. Transition. In the event an Agreement is terminated for any reason whatsoever, any Client data held by Provider shall be returned to the Client in a commercially reasonable manner and time frame, not to exceed fifteen (15) calendar days following the date of request of the return of such data by Client. In the event that Client requests Provider's assistance to transition to a new service provider, Fruth Group shall do so, provided that (i) all fees due and owing to Provider under this Agreement are paid to Provider in full prior to Provider performing such a transition for Client, and (ii) Client agrees to pay Provider its then-current hourly standard market rate for such assistance. Provider shall have no obligation to store or maintain any Client data in Provider's possession or control beyond fifteen (15) calendar days following the termination of the Agreement in question. Provider shall be held harmless for and indemnified by Client against any and all claims, costs, fees, or expenses incurred by either party that arise from, or are related to, Provider's deletion of Client data beyond the time frames described in this Section.

3.6. Impact. Termination of a Statement of Work shall not act as a termination of any other Statement of Work or as a termination of any other Agreement or Terms of Service.

3.7. Revisions. From time to time, Provider may revise the terms and conditions of this Master Services Agreement or any Terms of Service (including, without limitation, any of the policies incorporated by reference). Notice of revisions

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to these documents shall be posted to the legal section of the Fruth Group Website ("the Website") at <https://fruthgroup.com/legal/> and deemed given and effective on the date posted to the Website. If there are any revised sections that Client is not willing to accept, detail of issues must be sent to ITresolutions@fruthgroup.com within five (5) days after revisions are posted to the Website. Provider has fourteen (14) days to respond to the stated issues. If Provider acknowledges that resolution cannot be reached, Client may request termination of Service subject to the Termination provisions provided in this Master Services Agreement. By continuing to use the Service after revision(s) are in effect, Client hereby accepts and agrees to all such revisions as legal and binding.

4. CONTACTS

4.1. Authorized Contact Person. Client shall designate one primary, or if preferred, more authorized contact person(s) (each, an "Authorized Contact") with whom Provider will conduct Service-related communications. Likewise, Client may designate one or more Authorized Contacts with respect to individual Statements of Work. Each Authorized Contact shall be a point of contact for Provider, and shall be authorized to provide, modify and approve on Client's behalf, work direction, Statements of Work, and Change Orders. Client understands and agrees that Provider shall be permitted to act upon the direction and apparent authority of each Authorized Contact, unless and until Provider receives written notice from Client that an Authorized Contact is no longer authorized to act on Client's behalf. If during the Term of a Service Agreement, Client wishes to add or remove an Authorized Contact, or modify an Authorized Contact's information or authority, Client must notify Provider in writing of the change(s) including (in the event of the addition of an Authorized Contact) the Authorized Contact's name, address, email address and telephone number.

5. WARRANTIES

5.1. Provider shall pass through to Client, the manufacturer's warranties for each Product and agrees to facilitate utilization of manufacturer's product return policies. In no event will Fruth Group provide product return or warranty coverage beyond that provided by the manufacturer. Products that are accepted for return are subject to the manufacturer's applicable restocking fee(s).

5.2. Any third party products provided to Client pursuant to an applicable product Service Agreement, including but not limited to third party hardware, software, peripherals and accessories (collectively, "Third Party Products") shall be provided to Client "as is". Provider shall use reasonable efforts to assign all warranties (if any) for the Third Party Products to Client, but will have no liability whatsoever for such third party products. All Third Party Products are provided without any warranty whatsoever as between Provider and Client, and Provider shall not be held liable as an insurer or guarantor of the performance or quality of Third Party Products.

5.3. Provider assumes no liability for failure of equipment or software or any losses resulting from such failure.

5.4. Client warrants and represents that it shall not use any Fruth Group products or services for any purposes or activities that violate the laws of any jurisdiction, including the sending of unsolicited, bulk commercial email (i.e. spam).

5.5. In no event shall either party be liable for any special, indirect, exemplary or consequential damages, or for lost revenue, loss of profits, savings, or other economic loss arising out of or in connection with this Agreement, any Statement of Work(s) or any services performed or parts supplied hereunder, any loss or interruption of data, technology or services, or for any breach hereof or for any damages caused by delay in furnishing services under this Agreement or any statement(s) of work even if such party has been advised of the possibility of such damages. Each

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party's liability to the other for damages from any and all causes whatsoever and regardless of the form of action, whether in contract, tort or negligence, shall be limited to the amount of the aggrieved party's actual direct damages not to exceed the amount of fees paid by Client to Provider for the services during the three (3) months immediately prior to the date on which the cause of action accrued. It is understood and agreed that the costs of hardware or software (if any) provided to Client under this Agreement shall not be included in the calculation of the limitation of damages described in the preceding sentence.

5.6. Provider makes no express or implied warranty regarding the Service or Device or the installation of same and disclaims any implied warranty, including any warranties of merchantability and/or fitness for a particular purpose. Provider does not warrant that the Service or Device will function without failure, delay, interruption, error, degradation of voice quality or loss of content, data or information. Provider does not authorize anyone, including but not limited to its employees, agents or representatives, to make a warranty of any kind on its behalf and you should not rely on any such statement. Client agrees that it accepts the Device "as is" and that Client may be entitled to replacement in the event of any defect. The provisions of this section shall be applied to the fullest extent of the law, but if any portion of this section is determined to be unlawful, then this section shall be construed to limit liability against Provider to the fullest extent possible under the law.

5.7. Provider will not give out or issue credit for any interruption(s) of any Fruth Group Service.

6. LIMITATION OF LIABILITY

6.1. In no event shall Provider be liable to Client, Client's representatives or authorized assigns or anyone else for any incidental, direct, indirect, special, punitive, exemplary, or consequential damages, or for any damages for loss of data, loss of revenue or profits, relating to or arising out of any Service as set forth within an applicable Agreement, TOS, or SOW. Provider shall also not be liable for the use of or inability to use any aforementioned Service, the absence, delay, failure or outage of said Service, the inability to dial 911 or E911 to access emergency service personnel, the inability to dial security, law enforcement or fire prevention/protection services or systems, the use of and/or inability to use any contracted Device, the installation of any Device, as indicated in applicable Agreement. Nor shall Provider be liable for any delay or failure to provide Service, including 911 dialing, at any time or from time to time, or for any interruption or degradation of voice or other service quality caused by any reason including but not limited to the following: an act or omission of an underlying carrier, service provider, vendor or third party, equipment, network or facility failure, equipment, network or facility upgrade, Service, maintenance, modification, shortage, or relocation, or any force majeure events that are beyond Provider's control, including without limitation the failure of an incoming or outgoing communication, the inability of communications to be connected or completed, including 911 dialing, or degradation of voice quality. Fruth Group shall not be liable for unauthorized access to Provider's or Client's transmission facilities or premises, equipment or for unauthorized access to, or alteration, theft or destruction of, Client's data files, programs, procedures, or information through accident, fraudulent means or devices or any other method, regardless of whether such damage occurs as a result of Provider's negligence or other acts or omissions. Provider's liability for any act or omission shall in no event exceed 1 month's Service charges. The limitations set forth herein apply to all claims founded in breach of contract, breach of warranty, product liability, tort, and any and all other theories of liability, and apply whether or not Provider was informed of the likelihood of any particular type of damage. Further, you agree to reimburse Provider for all costs and expenses related to the defense of any such claims, including attorneys' fees and litigation costs. The provisions of this section shall be applied to the fullest extent of the law, but if any portion of this

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section is determined to be unlawful, then this section shall be construed to limit liability against Fruth Group to the fullest extent possible under the law.

7. REMEDIES

7.1. Notwithstanding any provision to the contrary, except for the Implementation Exception (described below), if Provider fails to meet its SLA commitments as defined in the applicable TOS on three (3) or more occasions over the course of three (3) consecutive months, Client shall have the right to terminate this Agreement with a 30-day notice for cause, with no further liability to Provider whatsoever. Client must notify Provider within three (3) business days of each missed SLA by emailing ITresolutions@fruthgroup.com and including the applicable ticket number. Provider has five (5) business days to contest or acknowledge failed SLA. After abiding by these conditions in each of the three (3) consecutive months, Client shall have the right to submit 30-day notice of termination with cause to ITresolutions@fruthgroup.com. The remedies contained in this paragraph are in lieu of (and are to the exclusion of) any and all other remedies that might otherwise be available to Client for Provider's failure to meet any service level during the term of applicable Agreement.

7.2. **Exemption.** The Parties acknowledge and agree that for the first sixty (60) days following the Effective Date, any SLA commitments described in this Agreement or other applicable Agreement or Terms of Service shall not apply to Provider, it being understood that there may be unanticipated downtime or delays due to Provider's initial startup and transition activities with Client (the "Implementation Exception").

8. INDEMNIFICATION AND WAIVER OF CLAIMS

8.1. You are liable for any and all use of the Service and/or Device by yourself and by any person making use of the Service or Device, and you agree to defend, indemnify and hold harmless Fruth Group against any and all liability for any such use that fails to comply with this Terms of Service. You agree to defend, indemnify and hold harmless Fruth Group from any and all claims and/or liability for damages, personal injury, death, fines, penalties, costs, expenses, losses, lost profit, lost revenue, property damage, attorneys' fees, and any and all other damages of whatever kind and nature relating to or arising out of the Service, the use of or inability to use the Service, the absence, failure or outage of the Service, the inability to dial 911 or E911 to access emergency service personnel, the inability to dial security, law enforcement or fire prevention/ protection services or systems, the Device, the use of and/or inability to use the Device, the installation of the Device, and/or this Terms of Service unless the claims or causes of action arise from our gross negligence, recklessness, or willful misconduct. This section shall survive the applicable Agreement or Terms of Service.

9. CONTENT

9.1. Client is responsible for all liability that may arise from the content you transmit to any person, whether or not you authorize it, using the Service or Device. You promise that you and anyone who uses the Service and all your and their content comply at all times with all laws, regulations, and written and electronic instructions for using the Service or Device.

10. COPYRIGHT AND TRADEMARK

10.1. Our Website content, our materials, services, logos, service marks and trademarks are protected by trademark,

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copyright, or other intellectual property laws, and international treaty provisions. Infringement by you may result in civil or criminal prosecution.

11. SOFTWARE COPYRIGHT

11.1. Any software used by Fruth Group to provide the Service and any software provided to you in conjunction with providing the Service is protected by copyright law and international treaty provisions. You may not copy the software or any portion of it.

12. INTELLECTUAL PROPERTY

12.1. Each party (a "Creating Party") owns and retains all intellectual property rights in and to all of the Creating Party's works of authorship, including but not limited to all plans, software or software modifications developed by the Creating Party, and all modules derived or created from such materials (collectively, "Creating Party's IP"). The Creating Party's IP may not be distributed or sold in any form or manner without the express written consent of the Creating Party. During the term of this Agreement, Client may use and modify any intellectual property provided to Client by Provider pursuant to this Agreement, provided that such modifications (i) do not result in or cause the infringement of any intellectual property rights of any third party, (ii) do not require Client to reverse engineer Provider's intellectual property, and (iii) do not negatively impact the security or integrity of any of Provider's equipment, or the integrity or implementation of the Services. Each party's limited right to use the other party's intellectual property as described herein automatically terminates upon the termination of this Agreement.

13. CONFIDENTIALITY

13.1. **Defined.** For the purposes of this Agreement, "Confidential Information" shall mean any and all non-public information provided to Provider by Client, including but not limited to Client's customer data, customer lists, internal Client documents, and related information. Confidential Information shall not include information that: (i) has become part of the public domain through no act or omission of Provider, (ii) was developed independently by Provider, or (iii) is or was lawfully and independently provided to Provider prior to disclosure by Client, from a third party who is not and was not subject to an obligation of confidentiality or otherwise prohibited from transmitting such information.

13.2. **Use.** Provider shall keep Client's Confidential Information confidential, and shall not use or disclose such information to any third party for any purpose except (i) as expressly authorized by Client in writing, or (ii) as needed to fulfill Provider's obligations under this Agreement. If Provider is required to disclose the Confidential Information to any third party as described in part (i) of the preceding sentence, then Provider shall ensure that such third party is required, by written agreement, to keep the information confidential under terms that are at least as restrictive as those stated in this Section.

13.3. **Due Care.** Provider shall exercise the same degree of care with respect to the Confidential Information it receives from Client as Provider normally takes to safeguard and preserve its own confidential and proprietary information, which in all cases shall be at least a commercially reasonable level of care.

13.4. **Compelled Disclosure.** If Provider is legally compelled (whether by deposition, interrogatory, request for documents, subpoena, civil investigation, demand or similar process) to disclose any of the Confidential Information, Provider shall immediately notify Client in writing of such requirement so that Client may seek a protective order or

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other appropriate remedy and/or waive Provider's compliance with the provisions of this Section. Provider will use its best efforts, at Client's expense, to obtain or assist Provider in obtaining any such protective order. Failing the entry of a protective order or the receipt of a waiver hereunder, Provider may disclose, without liability hereunder, that portion (and only that portion) of the Confidential Information that Provider has been advised by written opinion of counsel reasonably acceptable to Provider that it is legally compelled to disclose.

14. DISPUTE RESOLUTION AND BINDING ARBITRATION. It is important that you read this entire section carefully. This section provides for resolution of disputes through final and binding arbitration before a neutral arbitrator instead of in a court by a judge or jury.

14.1. Arbitration. Provider and Client agree to arbitrate any and all disputes and claims between Client and Provider except with respect to claims for amounts owed for services rendered. Arbitration means that all disputes and claims will be resolved by a neutral arbitrator instead of by a judge or jury in a court. For the purposes of this Agreement, to arbitrate is intended to be given the broadest possible meaning under the law. It includes, but is not limited to: disputes and claims arising out of or relating to any aspect of the relationship between Client and Provider, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory; disputes and claims that arose before this or any prior Terms of Service (including, but not limited to, claims relating to advertising); disputes and claims that may arise after the termination of this Terms of Service; disputes and claims that are currently the subject of individual litigation; disputes and claims that are currently the subject of purported class action litigation in which you are not a member of a certified class; and disputes and claims concerning the scope of this arbitration provision. References to "Client", "Provider", "Fruth Group", "us" and "you" include our respective subsidiaries, affiliates, agents, employees, predecessors in interest, successors and assigns, as well as all authorized or unauthorized users or beneficiaries of the Service under this Terms of Service or any prior Terms of Services between you and Fruth Group.

14.2. Informal Resolution of Disputes. Our staff can resolve most customer concerns quickly and to the customer's satisfaction. If you have a dispute or claim against us, you should first contact ITresolutions@fruthgroup.com and provide detailed information, including documents or analysis supporting your position and the basis of your claim. We shall be provided with fifteen (15) business days in which to research and respond to your claim. In the event your dispute or claim is not resolved to your satisfaction, you may seek to have that dispute or claim resolved as set forth below.

14.3. Formal Notice of Disputes. A party who intends to seek arbitration must first send to the other party a written "Notice of Dispute", setting forth in detail, including submission of supporting documentation, the grounds of your dispute. The Notice of Dispute to Fruth Group must be sent to Fruth Group, Attention "General Counsel," by certified mail addressed to 4960 E. Beverly Rd., Phoenix, AZ 85044.

The Notice of Dispute must describe the nature and basis of the dispute or claim and set forth the specific relief sought. If you and Fruth Group do not reach an agreement to resolve the dispute or claim within thirty (30) days after the Notice of Dispute is received, you or Fruth Group may commence an arbitration proceeding. The amount of any settlement offer made by you or Fruth Group shall be non-discoverable and shall not be disclosed to the arbitrator until after the arbitrator determines the amount, if any, to which you or Fruth Group is entitled.

14.4. Arbitrator and Arbitral Rules. The arbitration shall be administered by the American Arbitration Association ("AAA").

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14.5. Waiver of Judge or Jury Trial. You and Fruth Group agree that, by entering into this Agreement and its associated Terms of Service, that you and Fruth Group are waiving the right to a trial by judge or jury.

14.6. Waiver of Class Actions. You and Fruth Group agree that the arbitrator may award relief only in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. You and Fruth Group agree that you and Fruth Group may bring claims against the other only in your or its individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding. You and Fruth Group agree that, unless you and Fruth Group agree otherwise, the arbitrator may not consolidate more than one person's or entity's claims and may not otherwise preside over any form of a representative or class proceeding. If this specific waiver of class actions provision, or any portion thereof, is found to be unenforceable, then the entirety of this dispute resolution and binding arbitration provision shall be null and void.

14.7. Statute of Limitations. You must present a claim within one (1) year of the date of the occurrence of the event or facts giving rise to a dispute, or you waive the right to pursue a claim based upon such event.

14.8. Exceptions to Arbitration. Notwithstanding the obligation to arbitrate and any other provisions to the contrary herein, you and we agree that with respect to claims for unpaid invoices: (i) we may take our dispute to small claims court, if the contained dispute qualifies for hearing by such court; (ii) if you fail to timely pay amounts due, we may assign your account for collection, and the collection agency may pursue in court claims limited strictly to the collection of the past due debt and any interest or cost of collection permitted by law; (iii) you or we may take any disputes over the validity of any party's intellectual property rights to a court of competent jurisdiction; and (iv) any dispute related to or arising from allegations associated with fraudulent or unauthorized use, theft, or piracy of service may be brought in a court of competent jurisdiction.

14.9. Modification of Arbitration. If Fruth Group makes any substantive change to this arbitration provision, you may reject any such change and require Fruth Group to adhere to the language in this provision.

14.10. Venue/Jurisdiction. All claims for Arbitration or any other disputes related to this Master Services Agreement, any Terms of Service, or Statement of Work shall be submitted to and heard by the office of AAA. Should an evidentiary hearing be required by the Arbitrator, such hearing shall be heard in the City of Phoenix, County of Maricopa, and State of Arizona.

15. PRODUCT SALES TERMS

15.1. Client acknowledges that Fruth Group is reselling (and not itself providing) products purchased by Client including, without limitation, hardware, software and/or software licenses ("Product(s)").

15.2. Client acknowledges the terms and conditions governing the use of such Products shall be solely between Client and the manufacturer.

15.3. Client will not use the Products sold by Fruth Group for use in life support, life sustaining, nuclear or other applications in which failure of such Products could reasonably be expected to result in personal injury, loss of life or catastrophic property damage. Client agrees that Fruth Group is not liable, in whole or in part, for any claim or damage arising from such use of Products.

15.4. All shipments of Products by Fruth Group to Client are FOB point of shipment. Insurance coverage, transportation

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costs and all other expenses applicable to shipment from Fruth Group to Client's identified point of delivery will be the responsibility of the Client.

15.5. Risk of loss will pass to the Client upon delivery of the Products to the common carrier (regardless of who pays such common carrier) or the Client's representative at Fruth Group's point of shipment.

15.6. Client grants Provider a security interest in and to the Products as security for payment in full of the purchase price. Client authorizes Provider to file and/or record any documents it deems necessary to perfect this security interest.

15.7. Client will obtain all licenses, permits and approvals for the use of the Services or Products, which may be required by any governmental agency, foreign or domestic, having jurisdiction over the transaction

16. MANAGEMENT OF YOUR SYSTEMS AND DATA

16.1. System Management and Service Performance. Unless stated otherwise in applicable Terms of Service (Managed IT Services, Hosted Cloud Services, and/or Cloud Voice Services), Client is solely responsible for obtaining, installing, configuring, and maintaining suitable equipment, including but not limited to firewall, switches, servers, computers, and software. This includes responsibility for system management and performance, including any necessary system or software upgrades, patches, or other fixes which are or may become necessary to access the Service and to operate your computer.

16.2. Monitoring of Network Performance. Fruth Group may measure and monitor network performance. We may also access and record information about your computer's profile and settings and the installation of the Software in order to provide customized technical support. No adjustments to your computer settings will be made without your permission. You hereby consent to Fruth Group's monitoring of your Internet connection and network performance, and the access to and adjustment of your computer settings, as set forth above, as they relate to the Service.

17. EXPORT

17.1 Client represents and warrants:

17.1.1. That they agree to comply fully with all relevant export laws and regulations of the United States, including but not limited to the U.S. Export Administration Regulations, administered by the Department of Commerce, Bureau of Industry and Security. You also expressly agree that Client shall not export, directly or indirectly, re-export, divert, or transfer any portion of the Service or Device, including, without limitation, to any destination, company, or person restricted or prohibited by U.S. export controls.

17.1.2. That Client is not located in or a national of any country that is embargoed or restricted under export regulations or are otherwise a person or entity to which Fruth Group is legally prohibited from providing the Services.

17.1.3. Client will not possess, use, import, export or resell (and shall not permit the possession, use, importation, exportation, or resale of) the Services or any Information or technical data provided by Fruth Group under these Terms of Service or any Order or agreement in which they are incorporated in any manner which would cause Fruth Group to breach any applicable export control laws, rules, or regulations.

17.1.4. Client represents, and warrants without limitation, that it will not provide or facilitate administrative access to or permit use of the Services by any persons (including any natural person, government or private entity or other form of

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body corporate) that is located in or is a national of any country that is embargoed or highly restricted under applicable export laws, rules or regulations.

18. OWNERSHIP OF SERVICES/INTELLECTUAL PROPERTY

18.1. No work or professional services performed and/or provided by Fruth Group under this Order shall be deemed to be "Work For Hire" and shall remain at all times the sole property of Fruth Group. For so long as Client is not in default on any obligation under this Agreement, any Terms of Service, or a Statement of Work, Fruth Group grants Client a non-exclusive, non-transferable license to use the work product of such services. Such license ends upon the termination of the applicable Order or agreement pursuant to which they were performed.

18.2. All software that is provided to Client is subject to this Master Services Agreement and applicable Terms of Service and any Order or SOW in which they are incorporated including software that we may authorize you to install on devices located outside of our data center. Client shall not use any software provided by Fruth Group after the expiration or termination of any Agreement, Terms of Service, Statement of Work, or Order in which they are incorporated.

18.3. Client shall not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any software we provide.

18.4. Unless permitted by the terms of an open source software license, Client may not reverse engineer, decompile or disassemble any software we provide for Client's use except and to the extent that Client is expressly permitted by applicable law to do so and then following at a minimum of ten (10) days' advance written notice to Fruth Group. Any additional restrictions, which may apply to software we utilize in the performance of the Services, will be specified in the applicable Order.

18.5. Where specifically prohibited, Client shall not mix software license ownership when utilizing Fruth Group services. In such cases, where the Client provides all licensed products, including the OS, all licenses must be provided by the Client and may not be mixed with Fruth Group licensed products. Requirements vary by software vendor.

19. PRIVACY

19.1. Fruth Group Service utilizes, in whole or in part, the public Internet and third-party networks to transmit voice and other communications. You acknowledge and understand that Fruth Group cannot guarantee that voice over IP communication is completely secure. You agree that Fruth Group may access all features of your account and the Service to determine whether the Service is being used fraudulently and/or in violation of this Terms of Service, and for any other purposes. You agree that Fruth Group shall not be liable for any lack of privacy. Fruth Group is committed to respecting your privacy relating to personally identifiable information. Once you choose to provide personally identifiable information, it will only be used in the context of your relationship with Fruth Group. Fruth Group will not sell, rent, or lease your personally identifiable information to others. Upon the appropriate request of a government agency, law enforcement agency, court or as otherwise required by law, Fruth Group may disclose personally identifiable information. Please refer to our Privacy Policy for additional information.

20. ASSIGNMENT

20.1. This Agreement or any associated Terms of Service or Statements of Work may not be assigned or transferred by

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Provider without the prior written consent of the Client. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their legal representatives, and permitted successors and assigns. Notwithstanding the foregoing, Provider may assign its rights and obligations hereunder to a successor in ownership in connection with any merger, consolidation, or sale all of the assets of the business of a party, or any other transaction in which ownership of more than fifty percent (50%) of either party's voting securities is transferred; provided such assignee expressly assumes the assignor's obligations hereunder.

21. SURVIVAL

21.1. The provisions of this Terms of Service relating to indemnification, limitations on liability, warranty limitations and disclaimers, resolution of disputes, billings and your obligation to pay for the Service provided and any additional usage charges, shall survive the termination of the Terms of Service and the termination of the Service.

22. CALEA

22.1. Fruth Group intends to fully comply with the Communications Assistance for Law Enforcement Act ("CALEA"). By using the Service, you hereby agree and consent to Fruth Group's right to monitor and otherwise disclose the nature and content of your communications if and as required by CALEA without any further notice to you.

23. FORCE MAJEURE (EVENTS BEYOND FRUTH GROUP'S CONTROL)

23.1. Fruth Group shall be excused from any delay or failure in performance hereunder caused by reason of occurrence or contingency beyond its reasonable control, including without limitation, acts of God, earthquake, fire, flooding, riots, war, government intervention, embargoes, strikes, labor difficulties, equipment failure, late delivery by suppliers or other difficulties as may occur in spite of Fruth Group's best efforts.

24. MISCELLANEOUS

24.1. **Amendment.** No amendment or modification of this Agreement or any Statement of Work (including any schedules or exhibits) shall be valid or binding upon the Parties unless such amendment or modification specifically refers to this Agreement, is in writing, and is signed by one of the Designated Contacts or Authorized Signors of each party.

24.2. **Time Limitations.** The Parties mutually agree that any action for breach of or upon a matter arising out of this Agreement or any Terms of Service or Statement of Work must be commenced within one (1) year after the cause of action accrues or the action is forever barred.

24.3. **Severability.** If any provision hereof or any Statement of Work is declared invalid by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such invalidity, illegibility or unenforceability so that the remainder of that provision and all remaining provisions of this Agreement or any Statement of Work shall be valid and enforceable to the fullest extent permitted by applicable law.

24.4. **Other Terms.** Provider shall not be bound by any terms or conditions printed upon or written on any purchase order, invoice, memorandum, or other written communication between the Parties unless such terms or conditions are incorporated into a duly executed Statement of Work. In the event any provision contained in this Agreement is held to

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be unenforceable in any respect, such unenforceability shall not affect any other provision of this Agreement, and the Agreement shall be construed as if such an unenforceable provision or provisions had never been included in this Agreement.

24.5. No Waiver. The failure of either party to enforce or insist upon compliance with any of the terms and conditions of this Agreement, the temporary or recurring waiver of any term or condition of this Agreement, or the granting of an extension of the time for performance, shall not constitute an Agreement to waive such terms with respect to any other occurrences.

24.6. Merger. This Agreement, together with any TOS or SOW(s), sets forth the entire understanding of the Parties and supersedes any and all prior agreements, arrangements or understandings related to the Services, and no representation, promise, inducement or statement of intention has been made by either party which is not embodied herein. Any document that is not expressly and specifically incorporated into this Agreement, our Terms of Service or Statement of Work shall act only to provide illustrations or descriptions of Services that may be provided, and shall not act to modify this Agreement or provide binding contractual language between the Parties. Provider shall not be bound by any agents' or employees' representations, promises or inducements not explicitly set forth herein.

24.7. Non-Solicitation. Client acknowledges and agrees that during the term of any applicable Agreement(s) and for a period of one (1) year following the termination such Agreement(s), Client will not, individually or in conjunction with others, directly or indirectly solicit, induce or influence any of Provider's employees or subcontractors to discontinue or reduce the scope of their employment and/or business relationship with Provider, or recruit, solicit or otherwise influence any employee or agent of Provider to discontinue such employment or agency relationship with Provider. In the event that Client violates the terms of the restrictive covenants in this Section, the Parties acknowledge and agree that the damages to Provider would be difficult or impracticable to determine, and agree that in such event, as Provider's sole and exclusive remedy therefore, Client shall pay Provider as liquidated damages and not as a penalty, an amount equal to fifty percent (50%) of that employee or subcontractor's then current annual salary/compensation with Provider (including any signing, relocation, or any other types of bonuses, commissions, stipends, etc).

24.8. Insurance. Provider and Client shall each maintain, at their own expense, all insurance reasonably required in connection with this Agreement or any applicable Statement of Work, including but not limited to, workers compensation and general liability. Provider agrees to maintain a general liability policy with a limit not less than one million USD (\$1,000,000).

24.9. No Third Party Beneficiaries. The Parties have entered into this Agreement solely for their own benefit. They intend no third party to be able to rely upon or enforce this Agreement or any part of this Agreement.

24.10. Usage in Trade. It is understood and agreed that no usage of trade or other method of dealing between the Parties to this Agreement shall be used to modify, interpret, supplement, or alter in any manner the terms of this Agreement.

24.11. Business Day. Unless otherwise directly specified, any time period set forth in this Agreement, a Terms of Service, or a Statement of Work, that expires on a day other than a business day in Maricopa County, Arizona, shall be extended to and through the next succeeding business day in Maricopa County, Arizona.

24.12. Notices. Where notice is required to be provided to a party under this Agreement, such notice shall be deemed

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delivered upon receipt by the receiving party, or refusal of delivery, when deposited in the United States Mail, first class mail, certified or return receipt requested, or one (1) day following delivery when sent by any non-USPS courier or parcel service to the Client addresses set forth in this Agreement, or to such other address(es) as the Parties may designate in writing from time to time.

24.13. Subcontractors. Provider may subcontract part or all of the Services to one or more third Parties provided, however that Provider shall be responsible for, and shall guarantee, all work performed by any Provider-designated subcontractor as if Provider performed such work itself. Notwithstanding the foregoing, Provider shall not delegate or subcontract any Services that are expressly designated as being non-delegable by Client on a Statement of Work.

24.14. Counterparts. The Parties may execute and deliver this Agreement and any Statement of Work in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be one agreement. Each party acknowledges and agrees that this Agreement is intended to be executed and transmitted to the other party via electronic means. Accordingly, a party may execute and deliver this Agreement (or any Statement of Work) electronically (e.g., by digital signature and/or electronic reproduction of a handwritten signature), and the receiving party shall be entitled to rely upon the apparent integrity and authenticity of such signature for all purposes.

24.15. No Waiver of Rights. Our failure to exercise or enforce any right or provision of this Terms of Service will not constitute a waiver of the right or provision. Fruth Group reserves all of its rights at law and equity to proceed against anyone who uses the Services or Device illegally or improperly. All determinations by Fruth Group under this Terms of Service and exercise of its rights are made and done in our sole and absolute discretion.

24.16. No Third-Party Beneficiaries. If you are not a party to this Agreement, you do not have any remedy, claim, liability, reimbursement, or cause of action. This Agreement does not create any other third-party beneficiary rights.

24.17. Severability. If any part of this Agreement or associated Terms of Service is legally declared invalid or unenforceable, all other parts of this Agreement and Terms of Service will remain valid and enforceable. This invalidity or non-enforceability will not invalidate or render unenforceable any other portion of this Agreement / Terms of Service.

24.18. Entire Agreement. This Master Services Agreement, along with any related Terms of Service for subscribed product families, relevant Statements of Work, and any Sales Orders constitute the entire Agreement between Client and Provider and govern Client's use of the Products and/or Services, superseding any prior Agreements, Terms of Services, Statements of Work, or Sales Orders between Client and Provider and any and all prior or contemporaneous statements, understandings, writings, commitments, or representations concerning its subject matter.