



# Terms of Service Agreement

2024

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### ***Version history***

<b>Version</b>	<b>Date</b>	<b>Description</b>	<b>Author</b>	<b>Approver</b>
1.0	Sep 3, 2024	Terms of Services Agreement	Daniel Moshe	Daniel Moshe

## Terms of Service

By accepting the Proposal between you (the "**Client**") and Tech Guru, LLC ("**Tech Guru**"), you are accepting these Terms of Service (this "**Agreement**") as of the date of Proposal is signed or agreed to, by you the Client ("**Effective Date**").

### Section 1. Services Provided.

Tech Guru shall perform for Client the professional and technical services (the "**Services**") specified in a Caring IT Proposal (the "**Proposal**"), which may include (1) Implementation; (2) Proactive Services; and (3) Technical Support.

The Client shall afford Tech Guru such access to the Client's personnel, facilities, records, and resources as Tech Guru may reasonably require in order to perform the Services in the Proposal. These Terms of Service are hereby incorporated by reference into the Proposal. Any inconsistency between the language of the Proposal and these Terms of Service shall be resolved in favour of the language in the Proposal.

**1.1 Implementation.** Tech Guru shall bring all systems to a minimum baseline to improve productivity and company profitability and enable Tech Guru personnel to adequately support this environment. During Implementation, Tech Guru shall (1) inspect Client desktop, server room, and hosted environments; (2) make recommendations on improving environment; (3) deploy Tech Guru agent software application for Proactive Services; and (4) document environment for use when providing support.

**1.2 Management and Monitoring Services.** Tech Guru shall provide remote system management and monitoring to Client twenty-four (24) hours a day, seven (7) days a week ("**Proactive Services**"), except for limited downtime. Proactive Services include automated patch management and maintenance, backup monitoring, management of anti-virus solutions and monitoring of system alerts. Tech Guru shall use systems and software selected at its discretion to conduct Proactive Services and will seek to notify Client of any expected downtime. Tech Guru shall not be responsible for any inability to perform Proactive Services attributable to connectivity problems or

actions taken by clients, such as moving, tampering with or removing the monitoring software.

**1.3 Technical Support.** Tech Guru shall provide technical assistance and support for Client networks, computers, peripherals, and devices that are covered by this Agreement. Tech Guru shall provide technical assistance and support through (1) Remote Service Desk Support and (2) Onsite Support. Tech Guru has sole discretion in determining the method of providing requested technical assistance and support.

**1.3.1 Remote Service Desk Support.** Tech Guru shall provide Client with a phone number for telephone Service Desk support to assist in resolving problems for covered employees and equipment. Tech Guru shall staff the Service Desk from 7:00 AM to 8:00 PM (central time) Monday through Friday, excluding federal holidays. Service Desk support is available for all users covered by this Agreement. Tech Guru may restrict the amount of Service Desk support provided to Client if it determines, at its discretion, that Client is abusing Service Desk privileges. If Tech Guru is unable to resolve the problem from the Service Desk, Tech Guru may, at its sole discretion, escalate the problem to Onsite Service Desk Support.

**1.3.2 Onsite Support.** Onsite Support is contemplated for advanced maintenance and troubleshooting of Client's network. If Tech Guru, at its sole discretion, decides onsite support is needed, it shall dispatch a technician to Client's location. Client shall provide Tech Guru with reasonable access to premises and hardware installations to enable Tech Guru to provide onsite support. Onsite Support is available during normal business hours.

**1.4 Services Not Covered.** Tech Guru reserves the right not to provide support for any management and monitoring services for any device or software that is greater than five (5) years old, out of its manufacturer's warranty or maintenance period, no longer supported by its manufacturer, or has been damaged.

The Services do not include hosted applications and services, email hosting, offsite data storage, file sharing, or other services.

If persons other than Tech Guru move, perform work on, add to, or repair Client equipment, or if Client requests service outside the scope of this Agreement, Tech Guru may terminate this Agreement or correct problems at its current chargeable rate.

Support does not include software application or hardware training support for Client's employees or related third parties.

**1.4.1 Information Protection and Liability.** Client shall be and remain responsible for compliance with any and all applicable privacy, data security, confidentiality, or similar law, regulation, or industry standard.

Client is responsible for data backup, ensuring accuracy of data, data retention, testing restores to confirm data is recoverable, management of local backups and for otherwise ensuring that its data and application backup and retrieval procedures and systems are adequate for Client's business needs.

In order to confirm the accuracy of backed-up data, Client must contact Tech Guru to arrange for the testing Client wishes to have performed at pre-agreed additional cost.

Client must also inform Tech Guru of the contact person at the Client who will work with Tech Guru on such back-up testing.

## **Section 2. Fees and Payment.**

Client shall pay Tech Guru the fees set forth in the Proposal and shall reimburse Tech Guru for out-of-pocket expenses reasonably incurred in the course of Tech Guru's performance under this Agreement. Client is responsible for all sales, use, excise and other taxes and governmental charges which Tech Guru is at any time required to pay or collect in connection with Services or deliverables furnished under this Agreement.

**2.1 Additional Expenses.** Client shall pay for any additional services, hardware, or software Client orders from Tech Guru outside of this Agreement. Extra services and products will be billed to Client in accordance with Tech Guru standard billing practices and payment terms. Prior written approval from Client for additional services is not necessary.

**2.2 Monthly Invoices.** Unless otherwise specified in the Proposal, Tech Guru shall invoice Client for services in one (1) month increments. Tech Guru shall issue invoices to Client on a monthly basis. Client shall pay all such invoices by the tenth (10) day of the month the invoice is issued. If Tech Guru undertakes collection efforts due to any default in payment, Client shall be liable for all costs of collection, including Tech Guru's attorney's fees.

**2.3 Changes to Fees and Users.** Tech Guru may modify service pricing at any time. Tech Guru shall notify Client thirty (30) days before the costs are incurred. Client must provide thirty (30) days written notice to any decrease in the number of users and will be charged for each user until the next month's invoice.

**2.4 Disputed Charges.** Client shall notify Tech Guru of any disputed charges within thirty (30) days of receipt of the invoice containing the disputed charge. Failure to notify Tech Guru accordingly will result in a waiver of Client's right to any modifications of or credits to that invoice.

## **Section 3. Term and Termination.**

**3.1 Term.** This Agreement remains in effect for twelve (12) months from the Effective Date of this Agreement. This Agreement will automatically renew for additional twelve (12) months term unless either party gives written notice of non-renewal at least sixty (60) days prior to the expiration of the current term.

**3.2 Termination for Nonpayment.** If Client fails to make any payment owed to Tech Guru under this Agreement, Tech Guru's obligations to Client under this Agreement shall automatically terminate, without need for any notice by Tech Guru.

**3.3 Effect of Termination.** Termination of this Agreement will relieve Tech Guru of all obligations to provide Services to Client. However, in the event of termination by either party, Client shall remain obligated to make full payment on any invoices from Tech Guru for services or hardware provided by Tech Guru prior to the effective date of the termination.

## **Section 4. Confidential Information.**

**4.1 Definition.** “**Confidential Information**” means any material, data, or information in whatever form or media of a party to this Agreement that is provided or disclosed to the other, including the following categories of information whether disclosed orally or in writing, regardless of whether marked as confidential: algorithms, source code, specifications, software, test results, technical know-how, medical information or analysis, business or marketing plans, pricing, network configurations, network architecture, financial and operational information, trade secrets, and other matters relating to the operation of the parties’ business, including non-public personal information of customers of Client. The parties shall treat the terms of this Agreement as Confidential Information, except as described in section 9.4.

**4.2 Obligations.** All Confidential Information belonging to one party and disclosed to the other party remains the sole property of the disclosing party, and its confidentiality will be maintained and protected by the recipient with the same effort used to protect its own Confidential Information, which degree of effort must be reasonable. Each party agrees to take all necessary measures to prevent any such unauthorized use and disclosure by its employees, agents, contractors, dealers or consultants, which parties must be subject to obligations of confidentiality under this Agreement. The parties agree not to use each other’s Confidential Information for any other purpose than as contemplated by this Agreement. Upon termination of this Agreement, each party shall comply with any request to return or destroy the other party’s Confidential Information. Confidential Information will not be collected, sold, or used except as necessary for Tech Guru to perform the business purpose contemplated in this Agreement.

**4.3 Exceptions.** Confidential Information does not include information which: (a) becomes publicly known through no act or omission of the receiving party; (b) was in the receiving party’s lawful possession prior to the disclosure and had not been subject to limitations on disclosure; (c) is disclosed hereafter to the receiving party by a third party when the receiving party has no knowledge of any impropriety; (d) is developed independently; or (e) is generally furnished by the disclosing party to others without

restriction on confidentiality. This Agreement will not prevent either party from disclosing the other party's Confidential Information to the extent required by a judicial order or other legal obligation, provided that the receiving party shall promptly notify the other party in writing and in advance of such disclosure to provide the other party the opportunity to contest or minimize the scope of disclosure.

## **Section 5. Non-solicitation.**

Client shall not, during the term or within six (6) months following the termination of this Agreement, hire, employ or otherwise engage, directly or indirectly, any technical employee of Tech Guru who participated in the rendering of Services to Client under this Agreement or any Proposal. If Client violates this provision, Client shall pay Tech Guru a service charge equal to two (2) times the annual salary of the technician hired, due upon Client's hiring of the employee.

## **Section 6. Indemnification.**

Client shall defend, indemnify and hold harmless Tech Guru from and against any and all claims, obligations, losses, liabilities, and expenses of any kind, including reasonable attorneys' fees, which Tech Guru might incur as a result of any third-party claim based on the Services provided to Client under a Proposal or these Terms of Service.

## **Section 7. Privacy Practices.**

**7.1. Privacy Policy.** Tech Guru operates the Services and, as applicable, handles Personal Data, pursuant to the privacy policy available at <https://techguruit.com/privacy-policy/>

**7.2 Use of Client's data.** Tech Guru may share Client's Data 1) in order to comply with any applicable law, regulation, subpoena, court order or enforceable governmental request; 2) to detect, prevent, or otherwise address fraud, security or technical issues; or 3) to protect against harm to the rights, property or safety of Tech Guru or the public as requested or permitted by law.



**7.2.1. Operating the Services.** Tech Guru may receive, collect, store and/or process Service Data based on Tech Guru's legitimate interest in operating the Services. For example, Tech Guru may collect Personal Data (such as name, phone number, or credit card information) through the account activation process. Tech Guru may also use Service Data in an anonymized manner, such as conversion to numerical value, for the training of the machine learning models to support certain features and functionality within the Services.

**7.2.2. Communications.** Tech Guru may communicate with Client or Authorized Users to send product information and promotional offers or about the Services generally. If Client or an Authorized User does not want to receive such communications, Client may email Tech Guru on the provided email address as printed on the Proposal. Client and necessary Authorized Users will always receive transactional messages that are required for Tech Guru to provide the Services (such as billing notices and product usage notifications).

**7.2.3. Improving the Services.** Tech Guru may collect, and may engage third-party analytics providers to collect Usage Data to develop new features, improve existing features, or inform sales and marketing strategies based on Tech Guru's legitimate interest in improving the Services. When Tech Guru uses Usage Data, any Personal Data that was included in Service Data shall be anonymized and/or aggregated in such a manner that it no longer constitutes Service Data or Personal Data under applicable data protection laws. Any such third-party analytics providers will not share or otherwise disclose Usage Data, although Tech Guru may make Usage Data publicly available from time to time.

**7.2.4. Connecting to Third-Party Services.** Client may wish to connect third-party services to the Services (e.g., connecting Tech Guru to Client's single-sign-on service to verify 2FA status of Client's employees). When Client uses a third-party service to connect with Tech Guru, logs into the Services through a third-party authentication service, or otherwise provides Tech Guru with access to information from a third-party service, Tech Guru may obtain other information, including Personal Data, from those third parties and combine that Service or Usage Data based on Tech Guru's legitimate

interest in providing Client with functionality that supports the Services. Any access that Tech Guru may receive to such information from a third-party service is always in accordance with the features and functionality, particularly as to authorization, of that service. By authorizing Tech Guru to connect with a third-party service, Client authorizes Tech Guru to access and store any information provided to Tech Guru by that third-party service, and to use and disclose that information in accordance with this MSA.

**7.2.5. Third-Party Service Providers.** Client agrees that Tech Guru may provide Service Data and Personal Data to authorized third-party service providers, only to the extent necessary to provide, secure, or improve the Services. Any such third-party service providers will only be given access to Service Data and Personal Data as is reasonably necessary to provide the Services and will be subject to (a) confidentiality obligations which are commercially reasonable and substantially consistent with the standards described in this agreement; and (b) their agreement to comply with the data transfer restrictions applicable to Personal Data as set forth below.

**7.2.6 Service Data Safeguards.** (i) Tech Guru will not sell, rent, or lease Service Data to any third party, and will not share Service Data with third parties, except as permitted by this agreement and to provide, secure, and support the Services. (ii) Tech Guru will maintain commercially reasonable (particularly for a company of Tech Guru's size and revenue) appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality, and integrity of Service Data.

## **Section 8. Representations, Warranties, and Disclaimers.**

**8.1 Authority.** Each Party represents that it has validly entered into this agreement and has the legal power to do so.

**8.2 Services Warranty.** Tech Guru represents and warrants that the Services it performs under this Agreement will be performed in a manner consistent with industry standards.

**8.3 Limitation of Warranties.** Other than described in this Section, ALL WARRANTIES, CONDITIONS AND OTHER TERMS IMPLIED BY STATUTE, COMMON

LAW OR IN ANY OTHER WAY, INCLUDING ANY IMPLIED WARRANTIES AS TO QUALITY, PERFORMANCE, TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE AND USAGE OF TRADE, ARE EXCLUDED FROM THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. TECH GURU DOES NOT GUARANTEE ANY PARTICULAR SERVICE LEVEL. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, TECH GURU DOES NOT OFFER, AND SPECIFICALLY DISCLAIMS, ANY WARRANTY OF ITS OWN, EXPRESS OR IMPLIED. TECH GURU DOES NOT PROVIDE ITS OWN WARRANTIES FOR HARDWARE OR THIRD PARTY SOFTWARE UNDER THIS AGREEMENT. TECH GURU DOES NOT WARRANT THAT CLIENT'S NETWORK, HARDWARE, OR SOFTWARE WILL BE PROTECTED FROM FAILURE. TECH GURU DOES NOT WARRANT THAT CLIENT'S DATA OR DATA INTEGRITY WILL BE PRESERVED OR PROTECTED FROM FAILURE. TECH GURU DOES NOT PROVIDE ANY WARRANTY FOR ANY HARDWARE IT PROCURES ON BEHALF OF CLIENT. THE ONLY APPLICABLE WARRANTY ON ANY SUCH HARDWARE IS THE WARRANTY, IF ANY, PROVIDED BY THE MANUFACTURER OF SUCH HARDWARE.

## **Section 9. Limitation of Liability.**

All causes of action arising out of or relating to this Agreement shall expire unless brought within one (1) year after the first date of performance or breach which gives rise, in whole or in part, to the claim. TECH GURU SHALL NOT BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, COMPENSATORY, PUNITIVE, OR CONSEQUENTIAL DAMAGES RELATED TO DATA BREACH CAUSED BY MALWARE, RANSOMWARE, OR OTHER BREACH OF CLIENT'S SYSTEM; DATA THEFT, LOSS OR DESTRUCTION; DELAYS IN SERVICE; DATA BACKUP FAILURE OR CORRUPTION; HARDWARE FAILURE; VIOLATION OF ANY DATA PRIVACY OR SECURITY LAW REGULATION OR INDUSTRY STANDARD OR ANY OTHER LOSS, UNAVAILABILITY OR CORRUPTION OF CLIENT'S DATA, SYSTEMS OR HARDWARE. IN NO EVENT SHALL TECH GURU'S AGGREGATE LIABILITY UNDER OR AS A RESULT OF THIS AGREEMENT, EXCEED THE LESSER OF THE TOTAL PAYMENTS

ACTUALLY MADE TO TECH GURU BY CLIENT UNDER THIS AGREEMENT OR THE FEES PAID TO TECH GURU FOR THE PORTION OF SERVICES GIVING RISE TO THE CLAIM.

## **Section 10. Miscellaneous.**

**10.1 Choice of Law and Dispute Resolution.** This Agreement will be construed and interpreted under the laws of the State of Minnesota, excluding its conflicts of law doctrine. Any claim arising from or related to this Agreement must be brought in the state or federal courts located in Minneapolis, Minnesota. Prior to either party commencing any formal legal proceeding, officers for each party shall meet in person in an attempt to resolve the dispute in good faith. Client shall not join any claims in any forum with the claim of any other Client. Client shall not pursue any claim in any forum as a class representative or as a member of any putative class.

**10.2. Entire Agreement.** This Agreement, including the Proposal, comprises the entire agreement between the parties relating to this subject matter. This Agreement supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may be executed in several counterparts, each which will be deemed to be an original, and all of which, when taken together, will constitute one and the same instrument.

**10.3 Intellectual Property Rights.** Each Party will retain all rights, title and interest in any patents, inventions, copyrights, trademarks, domain names, trade secrets, know-how and any other intellectual property and/or proprietary rights ("Intellectual Property Rights"), and Tech Guru in particular will exclusively retain such rights in the Services and all components of or used to provide the Services. Client hereby provides Tech Guru a fully paid-up, royalty-free, worldwide, transferable, sub-licensable (through multiple layers), assignable, irrevocable and perpetual license to implement, use, modify, commercially exploit, incorporate into the Services or otherwise use any suggestions, enhancement requests, recommendations or other feedback Tech Guru receives from Client, Client's agents or representatives, Authorized Users, or other third parties acting on Client's behalf; and Tech Guru also reserves the right to seek intellectual property protection for any features, functionality or components that may

be based on or that were initiated by such suggestions, enhancement requests, recommendations or other feedback.

**10.4 Publicity Rights.** Client grants to Tech Guru a limited right to use Client's logo on Tech Guru's website. Tech Guru may publish a press release relating to the relationship between the parties subject to Client's prior written consent, which consent shall not be unreasonably withheld or delayed.

**10.5 Assignment.** Either Party may, without the consent of the other Party, assign this agreement to any affiliate or in connection with any merger, change of control, or the sale of all or substantially all of such Party's assets provided that (1) the other Party is provided prior notice of such assignment and (2) any such successor agrees to fulfil its obligations pursuant to this agreement. Subject to the foregoing restrictions, this agreement will be fully binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

**10.6 Severability.** If any provision in this agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be modified by the court and interpreted so as to best accomplish the original provision to the fullest extent permitted by law, and the remaining provisions of this agreement will remain in effect.

**10.7 Relationship of the Parties.** The Parties are independent service providers. This agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the Parties.

**10.8 Notices.** All notices provided by Tech Guru to Client under this agreement may be delivered in writing (a) by nationally recognized overnight delivery service ("Courier") or U.S. mail to the contact mailing address provided by Client on the Proposal; or (b) electronic mail to the electronic mail address provided for Client's account owner. Client must give notice to Tech Guru in writing by Courier or U.S. mail to 1205 French Creek Dr. Wayzata, MN 55391. All notices shall be deemed to have been given immediately upon delivery by electronic mail; or, if otherwise delivered upon the earlier of receipt or two (2) business days after being deposited in the mail or with a Courier as permitted above.

**10.9 Anti-Corruption.** Client agrees that it has not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of Tech Guru’s employees or agents in connection with this agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If Client learns of any violation of the above restriction, Client will use reasonable efforts to promptly give notice to Tech Guru.

**10.10 Publicity and Marketing.** Tech Guru may use Client’s name, logo, and trademarks solely to identify Client as a client of Tech Guru on Tech Guru’s website and other marketing materials and in accordance with Client’s trademark usage guidelines, if Client provides same to Tech Guru.

**10.11 Amendments.** Tech Guru may amend this agreement from time to time, in which case the new agreement will supersede prior versions. Tech Guru will notify Client not less than ten (10) days prior to the effective date of any such amendment and Client’s continued use of the Services following the effective date of any such amendment may be relied upon by Tech Guru as consent to any such amendment.

**10.12 Enforcements.** Tech Guru’s failure to enforce at any time any provision of this agreement does not constitute a waiver of that provision or of any other provision of this agreement.

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