



# TEN7CARE SUPPORT AGREEMENT

This agreement (“Agreement”) is entered by and between **Ten 7 Interactive, LLC** located at **80 South 8th Street, Ste 990 #85756, Minneapolis, MN 55402** (“TEN7”) and **<INSERT CLIENT NAME>** (“Client”) located at **<INSERT CLIENT ADDRESS + ZIP>**.

## SERVICE PERIOD

TEN7 will perform the services described in this Agreement during the Service Period. The Service Period will begin on **<START DATE>** and end on **<END DATE>**, unless this Agreement is terminated earlier, in which case, it will end upon termination of this Agreement. Either party may terminate this Agreement immediately if the other party is breaching the Agreement and does not cure the breach within thirty (30) days of written notice. Client may also terminate this agreement for any reason on thirty (30) days written notice to TEN7.

## BUSINESS AND SUPPORT SERVICES (“SERVICES”)

This Agreement includes **xx hours per year** (“Total Contract Hours”) for maintenance of your site. This includes periodic updates to your site, uptime monitoring, regular backups and archiving as described below. Any additional Client requests for support and maintenance will be billed at the Hourly Rate.

### TEN7 WILL PROVIDE ANALYTICS INSIGHT

TEN7 will work with Client to establish goals and key performance indicators for Client’s site and will track the performance of these indicators on a monthly basis. This includes recommendations for performance enhancement.

### TEN7 WILL PROVIDE VOICE OF THE CUSTOMER LISTENING

TEN7 will implement voice of the customer instruments that may include feedback buttons, intercept surveys, in-page surveys, targeted surveys, regular qualitative research and other mechanisms, to discover and understand users’ needs, monitor for unknown issues and to recommend site improvements and optimizations.

### TEN7 WILL MONITOR AND ATTEND TO THE HEALTH OF YOUR DRUPAL SITE

TEN7 will maintain and update the core Drupal modules up to the latest point release available of version 7 or version 8, including any third party modules that are installed by TEN7 as part of Client’s Drupal site, for the Service Period.



## **TEN7 WILL GUARANTEE YOUR CRITICAL PATHS**

TEN7 will guarantee that Client's approved critical business paths ("Critical Paths") remain unbroken when TEN7 performs updates to core Drupal modules, including any third party modules that are installed by TEN7 as part of Client's Drupal site. Critical Paths are defined by BEHAT tests in Client's Drupal site repository.

## **TEN7 WILL MONITOR YOUR SITE'S UPTIME, RESPONDING AS WE ARE ABLE**

TEN7 will use a third party service to actively monitor Client's site and will be alerted upon any down time. During TEN7 office hours, TEN7 will investigate, troubleshoot and attempt to resolve downtime, and will reach out to the hosting provider on Client's behalf, if necessary. Emergency after-hours support is available to the Client by calling TEN7 and leaving a voicemail on the designated after-hours extension. TEN7 will be alerted promptly and will respond as needed. TEN7 does not maintain hardware, operating system software or network infrastructure – this service is provided by Client's hosting provider, who is ultimately responsible for site uptime. Resolution time is not guaranteed.

## **TEN7 WILL PROTECT YOUR SITE'S CONTENT BY MAKING REGULAR BACKUPS**

TEN7 will use best practices to perform automated nightly backups of Client's site database. If a custom solution is required, Client will be billed for additional hours.

## **TEN7 WILL KEEP AN ARCHIVE OF YOUR SITE'S CONTENT**

TEN7 will configure automated site backups such that an archive is generated containing the last seven daily snapshots, the last four weekly snapshots and monthly snapshots as available.

## **TEN7 WILL STORE COPIES OF YOUR SITE IN A SEPARATE PHYSICAL LOCATION**

TEN7 will configure an automated nightly synchronization of all site files and backups to an offsite server using an encrypted connection, if Client's hosting provider supports such connections. This is a nightly snapshot of the Client's site and could be used to reproduce the site from a recent snapshot should a disaster occur at the Client's hosting provider.

## **TEN7 WILL USE A VERSIONING SYSTEM TO MANAGE YOUR SITE'S DRUPAL FILES**

TEN7 will use git, when available at Client's hosting provider, to maintain the files that comprise the Client's site and to promote or revert code from TEN7's remote code repository. This facilitates an exact accounting of all changes made to the site's Drupal files.

## **TEN7 IS AVAILABLE MON–FRI, 9AM–5PM CST & BEST EFFORT AFTER-HOURS**

TEN7 will provide a dedicated account manager to Client during TEN7's office hours which are Monday to Friday, 9am to 5pm CST. Client will be able to contact their account manager directly via phone or via email at support@ten7.com. For after-hours emergency-only support, TEN7 provides a voicemail service that promptly



alerts a TEN7 staff member for escalation and action: 612-868-7884, Option 0. Support requests received outside of standard business hours will be confirmed the following business day. Resolution time is not guaranteed.

#### WHAT IS NOT INCLUDED IN THIS SUPPORT AND MAINTENANCE AGREEMENT:

- Changes to the website content, including text, images, pages, menus, etc.
- Addition of new features to the website or modification of existing features
- Changes to the design of the website

Any requests for new functionality will be billed at the Hourly Rate.β

## LIMITATION AND REQUIREMENTS FOR SERVICES

### WEBSITE ACCESS

Client must provide an up-to-date copy of the Website code and database to TEN7 and appropriate access to Client's production Website. Client is responsible for ensuring that any copy of the Website code and database provided to TEN7 is at all times a complete, accurate and current copy of Client's live Website. Access to Client's production Website must include a full administrative Drupal account for TEN7. Any failure or delay by Client in providing such access or copy may prevent TEN7 from performing some or all of the Services but shall not affect Client's liability for fees or the term of the Agreement.

TEN7 may notify the Client if the copy provided TEN7 does not comply with the requirements of the Agreement, and request the Client resolve the problem, or on Client's request, provide a cost estimate for TEN7 to resolve it.

### NON-DRUPAL COMPONENTS

TEN7 does not provide support or development services for non-Drupal services or applications ("Client's Components"). The Website may include Client's Components provided they (i) do not prevent TEN7 from providing, or increase the time to provide, Services and (ii) comply with the terms of the Agreement. Services will only be provided for the Website components that consist entirely of Drupal or Drupal implementations or applications and associated data bases. Services will not be provided for, and does not include, any Website components which consist in whole or in part of any non-Drupal components, implementations or applications. Services are only provided for Websites that are in the current version of Drupal or the immediate preceding version and that are in either case officially supported by drupal.org.

### THIRD PARTY SERVICES

TEN7 is not responsible for damages arising from services or software provided by third parties, such as Google or Client's hosting provider.



## FEES

The monthly Maintenance Rate will be equal to \$ **xx**, which is equivalent to **x** hours per month multiplied by a rate of \$ **xx** per hour ("Hourly Rate"). At the end of every month, TEN7 will issue Client an invoice for Services rendered in the current month. The invoice will be equal to the Maintenance Rate. Any hours spent providing Services for additional Client requests will be invoiced separately at the Hourly Rate.

### EARLY TERMINATION FEES

TEN7 incurs many non-cancellable costs to perform the Services. These include, but are not limited to, securing additional data-storage and backup facilities, technology maintenance costs (for both hardware and software) and contract-specific encryption costs (such as the use of independently signed SSL certificates). In the event this Agreement is terminated before the end of the Service Period for any reason other than a breach of this Agreement by TEN7, Client agrees to pay TEN7 the following termination fees, in addition to the monthly fees for Services previously billed:

- a. An early termination fee equal to 10% of the Contract Total, defined as the Total Contract Hours multiplied by the Hourly Rate.
- b. A cost reimbursement fee equal to 35% of the Remaining Contract Total calculated by taking the Contract Total and subtracting each paid monthly invoice for Services rendered prior to termination.

## PAYMENT

Invoices will be sent at the beginning of each month during the Contract period, and are due upon receipt. Any invoice remaining unpaid for more than thirty (30) days from the date of invoice will accrue interest at a rate of the lesser of one and one-half percent (1.5 %) per month or the highest rate allowed by law. If TEN7 is required to bring or threaten an action against Client to receive payment, Client will pay TEN7's collections costs, including reasonable attorneys' fees. TEN7's fees do not include applicable taxes. Client will be responsible for the payment of all taxes in connection with this Agreement including, but not limited to, sales, use, excise, value-added, business, service, goods and services, consumption, withholding, and other similar taxes or duties. TEN7 reserves the right to freeze work in the event any invoice is past due.

## DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY

TEN7 PROVIDES ITS SERVICES WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TEN7 IS NOT LIABLE FOR LOSSES CAUSED BY THE UNAVAILABILITY, MALFUNCTION OR INTERRUPTION OF CLIENT'S WEBSITE. TEN7 CANNOT GUARANTEE THAT ITS WORK WILL BE ERROR-FREE. THE MAXIMUM LIABILITY OF TEN7 (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY IN TORT, BY



STATUTE OR OTHERWISE) FOR ANY AND ALL CLAIMS IN ANY MANNER RELATED TO THIS AGREEMENT, WILL BE THE PAYMENT OF DIRECT DAMAGES, NOT TO EXCEED (IN THE AGGREGATE) THE FEES RECEIVED BY TEN7 WITH RESPECT TO THE SERVICES WHICH ARE THE SUBJECT OF ANY CLAIM. IN NO EVENT WILL TEN7 BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGE, LOSS OR EXPENSES, OR ANY DAMAGES BASED ON BUSINESS INTERRUPTION, LOST BUSINESS, LOST PROFITS OR LOST SAVINGS EVEN IF IT EVEN IF IT HAS BEEN ADVISED OF THEIR POSSIBLE EXISTENCE. ANY ACTION BY CLIENT MUST BE BROUGHT WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION AROSE.

## MISCELLANEOUS

If any term, clause or provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement. Client may not assign this Agreement or the rights and obligations thereunder to any third party without the prior express written approval of TEN7. Any unpermitted assignment shall be null and void. TEN7 reserves the right to assign subcontractors as needed. The provisions of the Agreement shall be binding upon and shall inure to the benefit of the Parties hereto, their heirs, administrators, successors and permitted -assigns. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement.

Neither party will be liable for, or will be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions that are beyond such Party's reasonable control and that such Party is unable to overcome through the exercise of commercially reasonable diligence. If any force majeure event occurs, the affected Party will give prompt written notice to the other Party and will use commercially reasonable efforts to minimize the impact of the event.

This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota. Client and TEN7 agree to make a good-faith effort to resolve any disagreement arising out of, or in connection with, this Agreement through negotiation. Should the parties fail to resolve any such disagreement within thirty (30) days, any dispute, controversy or claim arising out of or relating to this Agreement, including any question regarding the validity, interpretation, scope, performance, breach or enforceability of this Agreement, shall be exclusively and finally settled by arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules (the "Rules"). The arbitration shall be conducted in Minneapolis, Minnesota, unless the Parties agree on another location. There shall be one arbitrator agreed to by the Parties within twenty (20) days of receipt by respondent of the request for arbitration, or if the Parties are



unable to agree, the arbitrator shall be appointed by the AAA accordance with the Rules. Any award of the arbitrator will be in accordance with the applicable law, will be in writing, and will state the reasons upon which it is based. The arbitrator will have no power to modify or abridge the terms of this Agreement. The award of the arbitrator will be final, and judgment on the award may be entered by any court having jurisdiction thereof. Each Party expressly agrees and irrevocably submits to the non-exclusive jurisdiction of the state and federal courts of Minnesota with respect to the entry and enforcement of any such award. Notwithstanding the foregoing, each Party shall be entitled to access the courts to (i) toll any statute of limitation or (ii) seek appropriate injunctive relief or other equitable remedy if, in such Party's sole discretion, such action is deemed necessary to avoid irreparable damage or preserve the status quo.

This Agreement constitutes the entire understanding of the Parties, and revokes and supersedes all prior agreements between the Parties and is intended as a final expression of their Agreement. It shall not be modified or amended except in writing signed by the Parties hereto and specifically referring to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date last signed below.

**TEN 7 INTERACTIVE, LLC**

**<CLIENT>**

By:

By:

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\_\_\_\_\_

Name:

Ivan Stegic

Name:

<CLIENT REPRESENTATIVE>

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\_\_\_\_\_

Title:

President

Title:

<TITLE>

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Date:

Date:

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