



# Professional Services Agreement

This Professional Services Agreement, effective as of **01/01/2025**, is between **Ten 7 Interactive, LLC**, a Minnesota limited liability company located at **1904 James Ave S, Minneapolis, MN 55403** (“Agency”) and **An Incredible Client Inc**, a corporation located at **1 Boogie Woogie Ave, Metropolis, CA 01234** (“Client”). Capitalized terms not defined in context have the meanings given in Section 13.

1. STATEMENTS OF WORK; SERVICES. Agency shall provide Client the services and Deliverables described in any document that references this agreement, details the fees for such work, and is signed by the parties (each an “SOW”). Upon signing, each SOW becomes part of this agreement. If an SOW conflicts with this agreement, the SOW controls.
2. FEES; EXPENSES. Agency shall invoice Client as provided in the SOW. Client shall pay invoiced fees and approved expenses within 7 days of receipt. Invoices not paid by the date due accrue interest at the lower of 1.5% per month or the highest rate permitted by applicable law. Paper check and credit card payments incur an additional 3.5% convenience fee.
3. CLIENT OBLIGATIONS. In addition to any assumptions or obligations in an SOW, Client shall, in a timely manner (a) provide Client Materials necessary for Agency’s performance of its services; (b) ensure that Client stakeholders are available and responsive over the course of the project; (c) ensure that all Client feedback and approvals are provided through a single point of contact; (d) provide any access necessary for Agency to perform its services; and (e) otherwise comply with its obligations under this agreement (each, a “*Client Obligation*”).

4. ACCEPTANCE. If an SOW provides for acceptance of Deliverables, Client must accept or reject in writing within the period specified in the SOW or, if unspecified, within five days of receipt (the “*Approval Period*”). If Client does not accept or reject a Deliverable within the Approval Period, it is deemed accepted. Deliverables may only be rejected for materially failing to conform to Specifications. Notice of rejection must be in writing and specify the reasons for rejection. Upon receipt of a timely rejection notice, Agency will promptly correct any non-conformities at Agency’s expense.
5. TERMINATION.
  - a. *Termination by Client.* Client may terminate an SOW on written notice to Agency: (i) if Agency breaches this agreement, and either the breach is not capable of being cured or Agency fails to cure the breach within 15 days of receiving written notice of the breach from Client; or (ii) for any other reason on written notice. If Client terminates for a reason other than Agency’s breach, Client shall pay the Early Termination Fee.
  - b. *Termination by Agency.* Agency may terminate an SOW on written notice to Client if Client breaches this agreement, and either the breach is not capable of being cured or Client fails to cure the breach within 15 days of receiving written notice of the breach from Agency.
  - c. *Effect of Termination.* Upon termination, Client shall pay all fees and approved expenses incurred through the date of termination and, following payment, Agency shall provide the Deliverables (in whatever state of completion).
  - d. *Work Stoppage.* If Agency has grounds for termination, Agency may instead suspend its work (without liability to Client) until Client cures the grounds for termination and agrees to an amended SOW adjusting the fees and schedule as reasonably required by Agency to account for Client’s breach.

6. CONFIDENTIAL INFORMATION. Each party (the “*Discloser*”) may disclose Confidential Information to the other party (the “*Recipient*”) in connection with this agreement. The Recipient agrees to (a) maintain the Confidential Information in confidence; (b) protect the Confidential Information with a reasonable degree of care, including employing industry standard security procedures to prevent unauthorized disclosure of Confidential Information; (c) not use the Confidential Information except in the performance of its obligations under this agreement; and (d) disclose the Confidential Information only to those of its employees and agents who have a need to know the Confidential Information and who are bound by agreement or law to maintain the confidentiality of the Confidential Information.
7. INTELLECTUAL PROPERTY. Subject to Agency’s receipt of payment under the SOW, Agency assigns to Client all of Agency’s rights in the Deliverables (other than Agency Tools incorporated in the Deliverables). Upon assignment, Agency grants Client a nonexclusive, royalty-free, worldwide license to use, modify, display, and otherwise take full lawful advantage of the Agency Tools in connection with the Deliverables. Upon request, Agency shall provide Client with a copy of any licenses applicable to any Third-Party Materials included in the Deliverables (the “*Third-Party Licenses*”). Client shall comply with the terms of the Third-Party Licenses. Client grants Agency a license to use the Client Materials as contemplated by this agreement.
8. PORTFOLIO RIGHTS. Upon Client’s publication of any Deliverable, Agency may publicize depictions of the Deliverables, link to any online content containing the Deliverables, and describe its role in creating the Deliverables. Agency may (a) publicize the fact that Client is Agency’s client; (b) describe the nature of its work for the Client; and (c) subject to any reasonable restrictions imposed by Client, utilize Client’s trade name(s) and trademark(s) in connection with its publicity.
9. WARRANTIES.

- a. *Mutual Warranties.* Each party warrants that (i) it is authorized to enter into and perform this agreement; (ii) entering into and performing this agreement will not conflict with any other agreement to which the party is bound; and (iii) it will perform under this agreement in accordance with applicable law.
- b. *Agency Warranties.* Agency warrants that (i) it will perform its services in a professional manner and in accordance with industry standards, (ii) it will assign personnel who are reasonably experienced and qualified to perform its services; (iii) upon delivery and for a period of 14 days thereafter (the “*Warranty Period*”), the Deliverables will materially conform to the Specifications, provided, that, no warranty is made as to Third-Party Materials; and (iv) to its Knowledge, the Deliverables will not, if used by Client as contemplated by the SOW and in accordance with any Third-Party Licenses, infringe any third-party intellectual property rights.
- c. *Remedies.* As Client’s exclusive remedy for a breach of the warranty in Section 9(b)(iii), and provided Client notifies Agency in writing prior to expiration of the Warranty Period, Agency will promptly revise nonconforming Deliverables and deliver Deliverables that materially conform to Specifications. As Client’s exclusive remedy for breach of the warranty in Section 9(b)(iv), Agency will, at its option, either (i) repair or replace the infringing Deliverable, (ii) obtain for Client the right to use the infringing Deliverable, or (iii) refund the amount paid by Client for the Deliverable (less depreciation based on the remaining useful life of the Deliverable).
- d. *Client Warranties.* Client warrants that Agency’s use of the Client Materials as contemplated by the SOW will not infringe any third-party intellectual property rights.
- e. ***Disclaimer.* Except as provided in this Section, each party’s performance under this agreement is provided “AS IS” and**

**without other warranty, including without limitation any warranties arising from the course of performance, course of dealing, or usage of trade. No warranty is given regarding Third-Party Materials or the performance of third-party services.**

10. INDEMNITY & LIMIT ON LIABILITY.

- a. *Indemnity.* Subject to Section 10(c), Agency shall indemnify and defend Client and its employees, officers, directors, shareholders, members, and managers (collectively, the “Indemnitees”) from any damages, expenses, fees, fines, penalties (including reasonable fees) and costs incurred by the Indemnitees in connection with any third-party claim arising out of Agency’s breach of this agreement, negligence, or intentional wrongdoing (a “Claim”). As a condition to Agency’s indemnification obligation, the Indemnitees shall give Agency prompt written notice of any Claim or potential Claim. In any defense, (i) Agency has the sole right to defend and settle the Claim using counsel of its choosing; and (ii) the Indemnitees shall reasonably cooperate with Agency in the defense and settlement of the Claim.
- b. *Exclusions.* Agency is not liable under Section 10(a) to the extent that Claims result from: (i) the negligent or willful acts of an Indemnitee; (ii) Agency’s compliance with the instructions of Client; or (iii) a claim that a Deliverable is infringing where the alleged infringement is due to modifications made by (or on behalf of) Client or the inclusion of Client Materials in the Deliverables.
- c. ***Limit on Liability. Each party’s maximum liability in any action relating to the subject of this agreement is limited to the total fees payable by Client pursuant to the SOW that is the subject of the dispute. Neither party is liable for any claim for lost profits or similar damages, even if foreseeable and regardless of the form of action. These limitations are subject to applicable law.***

11. GOVERNING LAW; JURISDICTION; VENUE. Minnesota law governs this agreement, exclusive of its conflict of laws principles. The state and

federal courts of Hennepin County, Minnesota are the exclusive venue for resolving any disputes under this agreement. The parties consent to the personal jurisdiction of such courts, and waive defenses concerning venue and convenience of forum.

12. DEFINITIONS. The following terms have the meanings given:

“*Agency Tools*” means Agency’s intellectual property (including its designs, methods, software, and trade secrets) that either preexist this agreement or are developed by Agency other than in providing services for Client under this agreement. Agency Tools includes any improvements that are not uniquely applicable to the Deliverables.

“*Client Materials*” means all documents, information, designs, data, specifications, graphics, logos, trademarks, written content, and other materials provided by or on behalf of Client to be used by Agency in connection with the preparation of or incorporated into the Deliverables.

“*Confidential Information*” means information that, either, is identified as confidential upon disclosure, or that the Recipient should understand to be confidential under the circumstances; *provided*, Confidential Information does not include information that: (i) at the time of disclosure is, or thereafter becomes, generally available to and known by the public other than as a result of, directly or indirectly, any act or omission by the Recipient; (ii) at the time of disclosure is, or thereafter becomes, available to the Recipient on a non-confidential basis from a third-party source, *provided*, such third party is not and was not prohibited from disclosing such Confidential Information to the Recipient by any contractual obligation; (iii) was known by or in the possession of the Recipient, as established by documentary evidence, prior to being disclosed by or on behalf of the Discloser pursuant to this agreement; or (iv) was or is independently developed by the Recipient,



as established by documentary evidence, without reference to or use of, in whole or in part, any of the Discloser's Confidential Information.

"*Deliverables*" means the final versions of the materials produced by Agency for Client pursuant to this agreement. Deliverables may include Client Materials, Agency Tools, and Third-Party Materials.

"*Early Termination Fee*" means an amount equal to 25% of the fees that would otherwise have been charged for the canceled portion of the project.

"*Knowledge*" means knowledge, without investigation, of the Agency team members producing the Deliverable.

"*Specifications*" are functional or technical specifications for work described in an SOW or that have been otherwise agreed to in writing by Client and Agency.

"*Third-Party Materials*" means materials belonging to third parties that are incorporated into the Deliverables, including without limitation open source software, fonts, and stock images.

### 13. MISCELLANEOUS.

- a. *Taxes.* Agency shall pay all taxes on its income and employment taxes for its personnel. Agency's fees and expenses do not include applicable taxes. Client shall pay any sales, use and value added taxes (without deduction against amounts due Agency) even if invoiced after work is completed.
- b. *Relationship of the Parties.* Agency is an independent contractor and not Client's partner. The parties are not engaged in a joint venture. Agency's employees are not to be considered Client's employees for any purpose. Agency is solely responsible for the means and manner of performing the services.



- c. *Legal Fees.* The prevailing party in any dispute regarding the subject of this agreement is entitled to recover its reasonable legal fees, experts’ fees, and costs.
- d. *This Agreement.* This “agreement” includes these terms and all SOWs, which are the entire agreement of the parties with respect to its subject. All prior and contemporaneous agreements are superseded. This agreement may only be amended by a writing signed by both parties. Changes to the SOW may be made by agreement of both parties via email or project management software. This agreement may be signed in counterparts. Each counterpart constitutes an original and all together constitute a single agreement. If any term of this agreement is determined to be unenforceable, the remainder of this agreement will not be affected. This agreement was negotiated by sophisticated parties and will not be construed in favor of or against either party.

AGREED as of the date first written above.

	<b>“Agency”</b>		<b>“Client”</b>
	Ten 7 Interactive, LLC		An Incredible Client Inc
	By		By
<b>Name</b>	Ivan Stegic	<b>Name</b>	Human Person
<b>Title</b>	Chief Executive Officer	<b>Title</b>	Chief Executive Officer
<b>Date</b>		<b>Date</b>	