USER Agreement

THIS USER AGREEMENT is a contract by and between you ("User" or "you") and Deterministic Programming, Inc., a Delaware Corporation, with a mailing address of One Broadway, 14th Floor, Cambridge, MA 02142, and accessible through OpenInclude.com ("OpenInclude.com", "we", or 'us'). You must read, agree with and accept all of the terms and conditions contained in this Agreement in order to provide your consulting services and to use our website located at www.openinclude.com and any associated subdomains (collectively, the "Site").

We may amend this Agreement at any time by posting a revised version on the Site or otherwise notifying you of the changes. Any revised version will state its effective date. Your continued use of the Site after the effective date of a revised version of this Agreement constitutes your acceptance of its terms.

YOU UNDERSTAND THAT BY CLICKING "I UNDERSTAND & ACCEPT", OR BY OTHERWISE USING THE SITE, YOU ARE AGREEING TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT ACCEPT THIS AGREEMENT IN ITS ENTIRETY, YOU MAY NOT ACCESS OR USE THE SITE.

TERMS & CONDITIONS

        OpenInclude.com is engaged in, among other things, providing services including software development, graphic design, remote management, and other endeavors that produce digital assets that manage software development by third parties, including guidance and quality assurance. User has expertise and experience in certain areas that it is indicated in its communications to OpenInclude.com and desires to consult with OpenInclude.com in User's areas of expertise. Based on User's expertise and experience providing the services described, OpenInclude.com desires to retain the services of User that will be provided to OpenInclude.com's clients, and User desires to render such services on the terms and conditions set forth below. In consideration of the foregoing and of the mutual covenants contained in this Agreement, the parties, intending to be legally bound, agree as follows:

1.   Retention as Consultant. OpenInclude.com retains User, and User agrees to render consulting services to OpenInclude.com and for the benefit of its clients, upon the terms and conditions set forth herein.

2.   User Duties. User covenants and agrees that it will, as an independent contractor, perform all services as may be mutually agreed upon the parties from time to time. All services (including individual elements of a larger project) will be summarized in writing (including delivery deadline and payment) and preapproved in writing prior to being initiated or rendered.

3.   Independent Contractor Status. The parties agree that User is an independent contractor and is specifically not an employee, agent, partner, joint venturer, covenantor, or representative of OpenInclude.com and that, as such, OpenInclude.com will not incur any liability as the result of User's actions. User shall at all times represent and disclose that it is an independent contractor of OpenInclude.com. User shall have no authority to contract for or bind OpenInclude.com in any manner and shall not represent to any third party that User is an employee, agent, covenantor, or representative of OpenInclude.com. OpenInclude.com shall not withhold any funds from User for tax or other governmental purposes. User agrees to report and pay any contributions or payments of taxes, unemployment insurance, and social security. User shall not be entitled to receive any salary or employment benefits offered to employees of OpenInclude.com, including but not limited to workers' compensation insurance coverage. OpenInclude.com shall not exercise control over User.

4.   Payments. OpenInclude.com shall pay to User, as compensation for the services to be rendered, the amount mutually agreed upon by the parties in their written communications or as otherwise provided herein. OpenInclude.com has various types of Users: "Reader", this individual is the approver of work, paying client and "Writer", the individual is the creator of digital content. A "Connection" is the relationship between the Reader and the Writer.

The Reader will directly manage the Writer, maintaining clear expectations and milestones through the project management tool of choice (e.g., Basecamp). The Reader will approve credit card payment weekly for the amount of Runway spent in the past week for each Connection. "Runway" means the maximum amount of time or money to be spent before additional approval must be sought.

The Writer will follow the guidance of the Reader, and keep the Reader up to date on progress through a project management tool of choice (e.g., Basecamp). The Writer will track hours daily or as often as otherwise requested. The Writer will receive payment through PayPal on a weekly basis after the approved services are rendered.

All Users recognize that they may not be paid for any time or costs incurred above and beyond those that are preapproved.

5.   Term & Termination.

5.1   Term. This Agreement shall commence on the agreed upon start date and

continue until the completion of the project(s) and/or duties provided, unless mutually agreed upon otherwise by the parties or if terminated as provided herein.

5.2   Termination. Despite the forgoing, either party may immediately terminate this Agreement with or without cause without prior notice and at any time.

6.   Covenant of Nondisclosure.

6.1   Confidential Information. Both parties acknowledge that OpenInclude.com and its clients possess certain intellectual property and information relating to its business that is confidential and proprietary to OpenInclude.com and its clients ("Confidential Information"). Confidential Information may take any of a wide variety of forms, including but not limited to: information, data, designs, software code, strategies, and inventions. User agrees not to use any of the Confidential Information in any way, or to manufacture or test any product or service embodying Confidential Information, except for the purpose of performing the services agreed in writing by the parties. User agrees to use its best efforts to prevent and protect the Confidential Information, or any portion, from disclosure to any person other than User's employees, officers, directors, agents, and representatives that have a need for disclosure in connection with User's authorized use of the Confidential Information. User agrees to take all steps reasonably necessary to protect the secrecy of the Confidential Information, and to prevent the Confidential Information from falling into the public domain or into the possession of unauthorized persons.

6.2   Limits on Confidential Information. Confidential Information shall not be considered proprietary and User shall have no obligation with respect to such information where the information: (i) was known to User prior to receiving any of the Confidential Information from OpenInclude.com; (ii) has become publicly known through no wrongful act of User; or (iii) was received by User without breach of this Agreement from a third party without restriction as to the use and disclosure of the information.

6.3   Ownership of Confidential Information. User agrees that all Confidential Information, whether or not it is proprietary, is and shall remain the property of OpenInclude.com or its clients, and that OpenInclude.com or its clients may use Confidential Information for any purpose without obligation to User. Nothing contained herein shall grant or imply any transfer of rights to User in the Confidential Information, or any inventions or other intellectual property protecting or relating to the Confidential Information.

The obligations of this Section 6 shall survive the termination of this Agreement and continue indefinitely or until the Confidential Information disclosed to User is no longer confidential. Irreparable harm shall be presumed if User breaches this Agreement for any reason. This Agreement is intended to protect OpenInclude.com and its client's proprietary information and rights, and any misuse of such information or rights would cause harm to OpenInclude.com's business. Therefore, User agrees that a court of competent jurisdiction should immediately enjoin any breach of this Agreement, upon a request by OpenInclude.com or its clients.

7.   Grant of Rights to Work Product.

 7.1   Subject to any limitations of this Agreement, the Work Product (as defined below) and all intermediary and final work product created in the course of the engagement shall be considered "work made for hire" and shall be entirely and exclusively OpenInclude.com, or at OpenInclude's sole option, its client's property (as owner and author under copyright, and as owner by assignment relating to any inventions, whether or not patentable) indefinitely, free of any claims whatsoever by User or any other person, firm or entity affiliated with User in any way. For purposes of this Agreement, the term "Work Product" means, without limitation, any tangible or intangible result arising from any services provided by the User (including but not limited to its employees, agents, and contractors) under this Agreement, including but not limited to any and all designs, plans, strategies, software algorithms and code, intellectual property, inventions, documents and communications. For further clarity, the foregoing grant of rights extends, without limitation, to any and all characters, objects, sounds and music embodied in the Work Product, trade names, trademarks, names or other identifications used with or in conjunction with the Work Product, whether created, designed and/or developed by or through User, from the inception of development, together with any other software, code or materials in which each is embodied, and all the documentation, along with any inventions, whether or not patentable, and all intellectual property arising from the consulting engagement. The grant of rights includes, without limitation, unrestricted and exclusive ownership and control of all copyrights trademarks, inventions and any other intellectual property arising from the consulting engagement. OpenInclude.com, or as applicable, its clients, shall accordingly have the sole and exclusive right as the owner and author, to secure any and all registrations, renewals, and extensions of such copyrights (it being understood that for such purposes, User and all other persons rendering services in connection with the Work Product shall be OpenInclude.com's worker for hire), along with any patents and trademarks, and User (and its employees and agents) agrees to cooperate with any filings to ensure the prosecution and ownership of any patents, trademarks and copyrights, including execution of assignments. If, whether by statutory amendment or judicial decision, OpenInclude.com, or as applicable, its clients, shall be determined not to be the author of the Work Product for copyright purposes, this Agreement shall constitute an irrevocable transfer

and assignment to OpenInclude.com, or as applicable, its client, of ownership of copyright (and all renewals and extensions) in such Work Product.

7.2   Without limiting the generality of the provisions of Section 7.1, above, with respect only to any material, as it relates directly to the Work Product, in any form created by or for User prior to the effective date of this Agreement, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by User, User hereby irrevocably grants, conveys, transfers, sets over and assigns to OpenInclude.com indefinitely all right, title and interest, in and to such material, including, without limitation, all rights under copyright, trademark, and patent (and all renewals and extensions) including the right to produce and authorize the production of any and all derivative works, and all proprietary rights of any kind therein, now known or later created throughout the world. OpenInclude.com shall have the sole and exclusive right to use such material, in whole or in part, in whatever manner OpenInclude.com may desire, including without limitation, the right to: (a) cut, edit, revise, alter and/or otherwise modify such materials; (b) freely use, perform, distribute, exhibit and exploit such materials; (c) license or assign to others, whether a client of OpenInclude.com or otherwise, to do so in any and all media now known or later developed; or (d) refrain from doing any or all of the foregoing.

7.3   User hereby, on behalf of itself, its employees and its contractors, irrevocably transfers and assigns to OpenInclude.com, and waives and agrees never to assert, any and all so-called "shop rights," "rental rights" and moral or "droit moral" rights that User, its employees or its contractors may have in or with respect to the Work Product, even after expiration or termination of this Agreement. User acknowledges that the Work Product is created for a commercial purpose. The rights assigned to OpenInclude.com in this Agreement give OpenInclude.com or any third party designated by OpenInclude.com, including but not limited to any OpenInclude.com client, the unlimited and unrestricted right to: (a) alter, modify, edit, and otherwise compromise the integrity of the Work Product; (b) manufacture, sell, rent, lease, license, download, stream, sublicense or otherwise vend the Work Product; (c) create derivative works; and (d) exploit all right, title and interest in and to the Work Product, by any method in which OpenInclude.com or its designated third party desires, and to use any inventions, trademarks, trade names or labels in connection therewith.

7.4   Breadth of Rights. Without limiting the generality of this Section 7, OpenInclude.com shall have the exclusive worldwide right, including the ability to assign the any rights hereunder, forever:
            (i)   To manufacture, duplicate, sell (on a wholesale or retail basis), lease, donate, distribute, market, download, stream, perform, license or sublicense the Work Product, or other reproductions (visual and non-visual) embodying all or any portions of the Work Product, under any trademarks, trade names or labels, in any forms and/or formats, through any and all means of distribution, whether now known or later developed or refrain from any or all of the foregoing;
            (ii)   To market, advertise, publicize and promote the Work Product through any and all means, whether now known or later developed, including without limitation, through normal retail channels, over the air, by telephone, satellite, cable, over the Internet or other computer networks, and by other electronic and digital delivery systems;
            (iii)   To perform the Work Product publicly and to permit the public performance on any basis whatsoever; and
            (v)   To develop and design, or cause to be developed and designed, at OpenInclude.com's expense, any and all derivative works based upon or derived from the Work Product.

8.   Legal Relief. In the event User breaches, or threatens to breach any of the covenants expressed in this Agreement, the damages to OpenInclude.com will be great and irreparable and difficult to quantify; therefore, OpenInclude.com may apply to a court of competent jurisdiction for injunctive or other equitable relief to restrain such breach or threat of breach, without disentitling OpenInclude.com from any other relief in either law or equity. In the event that any or all of the covenants expressed herein shall be determined by a court of competent jurisdiction to be invalid or unenforceable, by reason of its geographic or temporal restrictions being too great, or by reason that the range of activities covered are too great, or for any other reason, these covenants shall be interpreted to extend over the maximum geographic area, period of time, range of activities, or other restrictions to which they may be enforceable.

9.   Indemnification. User shall defend, indemnify, and hold harmless OpenInclude.com and its officers, directors, employees, agents, parent, subsidiaries and other affiliates, and OpenInclude.com's clients, licensors, from and against any and all damages, costs, liability, and expense, whatsoever (including attorneys' fees and related disbursements) incurred by reason of (a) any failure by User to perform any covenant or agreement of User set forth herein; (b) the death or injury to any individual, or damage to or loss of OpenInclude.com property or the property of OpenInclude.com's client due to the negligence and/or willful acts of User or User's personnel; or (c) any breach by User of any representation, warranty, or covenant under this Agreement. OpenInclude.com shall have the right of offset against fees or commissions due User under this Agreement in the amount of any indemnification which OpenInclude.com or its licensors are entitled under this Section 9.

10.   Representations and Warranties. As an inducement for OpenInclude.com to enter into this Agreement, User makes the following representations and warranties:

10.1 Qualifications. User hereby represents and warrants to OpenInclude.com that all statements and materials regarding its qualifications to perform the work contemplated under this Agreement are true and correct and are not misleading or incomplete for any reason including by reason of omission.

10.2 Good Title. User hereby represents and warrants to OpenInclude.com that OpenInclude.com will receive good and valid title to all deliverables delivered by User to OpenInclude.com under this Agreement, free and clear of all encumbrances and liens of any type.

10.3 Legal Authority. User has all necessary authority to enter into and perform all of its obligations under this Agreement and has taken all necessary action to authorize the execution, delivery and performance of this Agreement, and that the execution, delivery and performance of this Agreement does not violate any other agreement or understanding to which User is a party or by which it may be bound or to which any of its assets or properties may be subject.

11.   Limitation of Liability. IN NO EVENT WILL OPENINCLUDE.COM OR ANY OF ITS LICENSORS OR CLIENTS BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY OR INDIRECT COSTS OR DAMAGES, LITIGATION COSTS, INSTALLATION AND REMOVAL COSTS, OR LOSS OF DATA, PRODUCTION OR PROFIT. THE LIABILITY OF OPENINCLUDE.COM OR ANY OF ITS LICENSORS OR CLIENTS TO YOU FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED $500.00. THESE LIMITATIONS SHALL APPLY TO ANY LIABILITY, ARISING FROM ANY CAUSE OF ACTION WHATSOEVER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF OPENINCLUDE.COM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH COSTS OR DAMAGES AND EVEN IF THE LIMITED REMEDIES PROVIDED HEREIN FAIL OF THEIR ESSENTIAL PURPOSE.

12.   Side Agreements.

12.1 Despite Section 13.8, User and any OpenInclude.com client may enter into side or supplemental agreements, such as non-disclosure, assignment of rights, etc., however, the terms and conditions of this Agreement will supersede and govern any restriction or expansion of OpenInclude.com's rights or obligations.

12.2 All payments relating to, or in any way connected with the Work Product will only be made by OpenInclude.com to User. Any action that encourages or solicits complete or partial payment outside of OpenInclude.com or without OpenInclude.com's written permission is a violation of this Agreement. User shall not attempt to circumvent the payment system under any circumstances.

13. Miscellaneous.

13.1 Assignment or Amendment. This Agreement is not assignable by User and all obligations hereunder shall terminate automatically upon the death of User should such death occur prior to the termination of this Agreement. This Agreement shall be assignable by OpenInclude.com without limitation or consent of User. No alteration, modification, amendment, or other change of this Agreement shall be binding on OpenInclude.com unless in writing, approved and executed by an authorized officer of OpenInclude.com.

13.2 Governing Law. Any dispute arising under or in connection with this Agreement or related to any matter which is the subject of this Agreement shall be subject to the exclusive jurisdiction of the state and/or federal courts located in the Commonwealth of Massachusetts, USA. Further, this Agreement has been entered into and this Agreement shall be governed by the substantive laws of the Commonwealth of Massachusetts, USA without regard to its conflict of laws principles. Each of the parties consents to the exclusive jurisdiction of the courts of the Commonwealth of Massachusetts, USA in connection with any dispute arising under this Agreement and hereby waives, to the maximum extent permitted by law, any objection, including any objection based on forum non coveniens, to the bringing of any such proceeding in such jurisdictions.

13.3 Invalidity. The terms of this Agreement shall be severable so that if any term, clause, or provision shall be considered invalid or unenforceable for any reason, such invalidity or unenforceability shall not affect the remaining terms, clauses, and provisions, the parties intending that if any such term, clause, or provision were held to be invalid prior to the execution, they would have executed an agreement containing all the remaining terms, clauses and provisions of this Agreement.

13.4 Waiver of Breach. The waiver by either party hereto of any breach of the terms and conditions will not be considered a modification of any provision, nor shall such a waiver act to bar the enforcement of any subsequent breach.

13.5 Time. Time is of the essence in the performance of User's duties under this Agreement.

13.6 Return of Property. All of OpenInclude.com's property or property of OpenInclude.com's clients in the possession or control of User including, but not limited to specifications,

documentation, and source code as well as all material developed or derived by User in performing its duties under this Agreement must be returned by User to OpenInclude.com or client on demand, or at the termination of this Agreement whichever shall come first.

13.7 Notices: Consent to Electronic Notice. You hereby consent to the use of (a) electronic means to complete this Agreement and to deliver any notices pursuant to this Agreement; and (b) electronic records to store information related to this Agreement or your use of the Site. Notices hereunder shall be invalid unless made in writing and given (a) by OpenInclude.com via email (in each case to the address that you provide), (b) a posting on the Site or (c) by you via email to OpenInclude.com. The date of receipt will be deemed the date on which such notice is transmitted.

13.8   Entire Agreement. With the exception of any authorized communications regarding User's duties orpayments, this Agreement sets forth the entire agreement and understanding of the parties relating to its subject matter and cancels and supersedes any prior or contemporaneous discussions, agreements, representations, warranties, and other communications between them.

13.9 Cooperation. User agrees that at any time and from time to time, upon the request of OpenInclude.com, to do, execute, acknowledge, and deliver, or cause to be done, executed, acknowledged, and delivered, all such further acts, documents, and instruments as may be required to effect any of the transactions contemplated by this Agreement.