

CLIENT Agreement

THIS CLIENT AGREEMENT is a contract by and between you, or if you are entering on behalf of a company, your company ("Client" 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"). If you are entering into this Agreement on behalf of your company or employer, you expressly represent and warrant that you have the authority to bind the company to this Agreement.

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 ("OpenInclude.com Users"), including guidance and quality assurance. Client is seeking a third party that provides the same type of services for its internal business purposes. Client desires to retain the services of OpenInclude.com and recognizes that OpenInclude.com Users will provide those services, and OpenInclude.com desires to render and coordinate 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. Client retains OpenInclude.com, and OpenInclude.com agrees to render consulting services to Client, upon the terms and conditions set forth herein.

2. OpenInclude.com Duties. OpenInclude.com 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.

4. Payments. Client shall pay to OpenInclude.com, 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.

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, subject to immediate payment for services completed prior to such termination

5.3 Effect of Termination. Termination by either party shall not relieve Client of the requirement to pay OpenInclude.com for any hours or costs incurred prior to the effective date of the termination. All hours and costs will be invoiced to Client following termination in accordance with Section 4.

6. Covenant of Nondisclosure.

6.1 Confidential Information. Both parties acknowledge that the other party possesses

certain intellectual property and information relating to its business that is confidential and proprietary to its business ("Confidential Information"). Confidential Information may take any of a wide variety of forms, including but not limited to: payment method, pricing, information, data, designs, software code, strategies, and inventions. The receiving party of any Confidential Information 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. The receiving party agrees to use its best efforts to prevent and protect the Confidential Information, or any portion, from disclosure to any person other than the receiving party's employees, officers, directors, agents, and representatives that have a need for disclosure in connection with the receiving party's authorized use of the Confidential Information. The receiving party 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 the receiving party shall have no obligation with respect to such information where the information: (i) was known to the receiving party prior to receiving any of the Confidential Information; (ii) has become publicly known through no wrongful act of the receiving party; (iii) was received by the receiving party without breach of this Agreement from a third party without restriction as to the use and disclosure of the information; or (iv) was independently developed by the receiving party without use of the Confidential Information. In the case of Client, it may disclose the services performed freely, subject to any restrictions contained in this Agreement that relate specifically to OpenInclude.com's Confidential Information.

6.3 Ownership of Confidential Information. The receiving party agrees that all Confidential Information, whether or not it is proprietary, is and shall remain the property of the disclosing party, and that the disclosing party may use Confidential Information for any purpose without obligation to the receiving party. Nothing contained herein shall grant or imply any transfer of rights to the receiving party 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 the receiving party is no longer confidential. Irreparable harm shall be presumed if the receiving party breaches this Agreement for any reason. This Agreement specifically as it applies to Confidential Information is intended to protect the receiving party's proprietary information and rights, and any misuse of such information or rights would cause harm to the disclosing party's business. Therefore, the receiving party agrees that a court of competent jurisdiction should immediately enjoin any breach of this Agreement, upon a request by the disclosing party.

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 Client's (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 OpenInclude.com or any OpenInclude.com User or any other person, firm or entity affiliated with either party 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 OpenInclude.com or any OpenInclude.com 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 OpenInclude.com or any OpenInclude.com 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. Client 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, OpenInclude.com or any OpenInclude.com User and all other persons rendering services in connection with the Work Product shall be Client's worker for hire), along with any patents and trademarks, and OpenInclude.com or any OpenInclude.com 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, Client 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 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 OpenInclude.com prior to the effective date of this Agreement, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by OpenInclude.com, OpenInclude.com hereby grants to Client a non-exclusive, irrevocable, royalty-free, unrestricted, worldwide and perpetual license to use, reproduce, distribute, modify, translate, adapt, alter, improve, license and sublicense indefinitely, in and to the Work Product, 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. Client shall have the sole and exclusive right to use such material, in whole or in part, in whatever manner Client 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 Client 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 Breadth of Rights. Without limiting the generality of this Section 7, Client 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 Client's expense, any and all derivative works based upon or derived from the Work Product.

8. Legal Relief. In the event Client 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 disentiing 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. Warranty Disclaimer; Limitation of Liability.

9.1 TO THE MAXIMUM EXTENT PERMITTED BY LAW, OPENINCLUDE.COM DISCLAIMS ALL EXPRESS AND IMPLIED REPRESENTATIONS AND WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT REGARDING ANY OPENINCLUDE.COM USERS, THE WORK PRODUCT, OR ANYTHING RELATED TO THIS AGREEMENT. SECTION 5 STATES CLIENT'S SOLE AND EXCLUSIVE REMEDY AGAINST OPENINCLUDE.COM WITH RESPECT TO ANY DEFECTS, NON-CONFORMANCES, OR DISSATISFACTION.

9.2 IN NO EVENT WILL OPENINCLUDE.COM 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 TO YOU FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT CLIENT HAS PAID TO OPENINCLUDE.COM. 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.

10. Side Agreements.

10.1 Despite Section 11.7, Client may enter into side or supplemental agreements, such as non-disclosure, assignment of rights, etc., with OpenInclude.com Users, however, the terms and conditions of this Agreement will supersede and govern any restriction or expansion of OpenInclude.com's rights or obligations.

10.2 Client shall make all payments relating to, or in any way connected with the Work Product only to OpenInclude.com. 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. Client shall not attempt to circumvent the payment system under any circumstances.

10. Miscellaneous.

10.1 Assignment or Amendment. This Agreement is not assignable by Client. 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.

10.2 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 conveniens, to the bringing of any such proceeding in such jurisdictions.

10.3 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.

10.4 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.

10.5 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.

10.6 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.

10.7 Entire Agreement. With the exception of any authorized written communications regarding OpenInclude.com duties or payments, 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.