

Terms and conditions

2498625 ONTARIO INC.
300-615 Yonge Street
Toronto, Ontario M4Y 1Z5 CANADA
(hereinafter referred to as "Prometheus")

WHEREAS Client desires to retain the services of Prometheus for the design, development, modification and installation of Client's Internet web site and/or custom software used in the conduct of Client's business on the terms and conditions expressed herein;
AND WHEREAS Prometheus desires to provide such services to Client on the terms and conditions specified herein;
NOW THEREFORE in consideration of the premises and the mutual agreements and covenants herein contained, the parties covenant and agree as follows:

1. Definitions

- 1.1. "Affiliate" means a corporation that is a subsidiary of, or controlled by, the Client.
- 1.2. "Agreement" means this Agreement, including the Schedules to this Agreement, as amended or supplemented by mutual written agreement of the parties from time to time.
- 1.3. "Business Day" means Monday to Friday inclusive with the exception of statutory holidays in the Province of Ontario.
- 1.4. "Confidential Information" means all data and information which, when it is disclosed by a party, is marked or identified as "confidential" or "proprietary" and includes, without limitation, this Agreement, Client's business and financial information, and any other commercial or technical information disclosed or made available by either party to the other.
- 1.5. "Client Content" means any materials provided by Client for incorporation in the Deliverables, including without limitation any text, graphics, video or audio files, photos, designs, trademarks, or other artwork.
- 1.6. "Client Web Site" means the web site for operation by Client on the Internet.
- 1.7. "Custom Software" means written programs or procedures or rules and associated documentation pertaining to the operation of a computer system and that are stored in read/write memory;
- 1.8. "Defect" means a failure of the Deliverables to conform to the Specifications or to the then current published Documentation at the time the failure arises.
- 1.9. "Deliverables" means any computer software (in object code and source code form), programming code, HTML or other script, data, information or other materials developed or provided by Prometheus in accordance with the Specifications and the Statement of Work for inclusion or use in association with the Client Web Site and/or Custom Software, as the same may be modified, corrected or enhanced by Prometheus for Client from time to time
- 1.10. "Documentation" means any manuals or other documented instructions, provided to Client in hard copy or machine-readable form, which may be developed by Prometheus for the Deliverables.

- 1.11. "Intellectual Property Rights " means:(i) any and all intellectual property rights or other proprietary rights existing at any time under any, (i) patent law, (ii) copyright law, (iii) trade-mark law, (iv) design patent or industrial design law, or (v) any other statutory provision, treaty, convention, common law principle or other legal principle; and (vi) any and all applications, registrations, licenses, sub-licenses, franchises, agreements or any other evidence of a right in any of the foregoing.
- 1.12. "Services" means the web site and/or custom software development services that Prometheus is to perform under this Agreement including services in connection with the design, development, testing, delivery and installation of the Deliverables.
- 1.13. "Specifications" means the functional and feature requirements, the detailed design and technical specifications, and the operating and performance standards annexed hereto and against which Prometheus shall perform the Services.
- 1.14. "Statement of Work (SOW)" means the project methodology, development milestones, acceptance testing processes, installation and implementation procedures, education and training, action items and events, responsible individuals and entities, fees and fee payment schedules, post-implementation reviews and any other particulars the parties mutually determine are relevant to the completion of Prometheus's obligations under this Agreement, annexed hereto.
- 1.15. "Workaround" means those measures implemented by Prometheus and designed to facilitate continued uninterrupted use of the Deliverables.

2. Engagement for Services

- 2.1. Client hereby retains Prometheus to provide the Services in accordance with the provisions of this Agreement, and Prometheus hereby accepts such retainer.
- 2.2. Client acknowledges that Prometheus's performance of the Services is dependent in part on Client's actions, including without limitation prompt delivery of or access to Client Content, and that any dates or time periods relevant to the performance of the Services by Prometheus shall be appropriately extended to account for any delays due to Client. Client agrees to provide Prometheus with such information, access and co-operation as Prometheus may reasonably request in connection with the performance of the Services. In connection therewith, Client shall designate a primary technical contact from within Client for the purpose of communicating with Prometheus with respect to the provision of the Services.
- 2.3. This Agreement shall commence as of the date hereof and shall expire one (1) year later (the "Term"), unless earlier terminated pursuant to the terms and conditions hereunder. This Agreement shall automatically renew, pursuant to the terms and conditions set forth hereunder, each year on the anniversary of the date hereof for successive one (1) year periods (each, a "Renewal Term"), unless notice is provided by either party hereto to the other party indicating the intention not to renew the Agreement and which notice must be provided at least sixty (60) days prior to the expiry of the Term or each Renewal Term, as the case may be.

3. Specifications and Statement of Work

3.1. Preparation and Approval

- (1) With the assistance of Client, Prometheus shall draw up the Specifications and Statement of Work in accordance with Client's requirements and shall deliver the same to Client for approval.

- (2) Client shall notify Prometheus in writing of any amendments it requires to the Specifications and Statement of Work within five (5) business days of its delivery (or re-delivery, as the case may be) to Client. In the event that Prometheus receives no such notice within the time specified, Client shall be deemed to have approved the Specifications and Statement of Work.
- (3) In the event that Client requires amendments to the Specifications and Statement of Work and notifies Prometheus of same within the specified period, Prometheus shall amend the Specifications and Statement of Work accordingly. Prometheus shall redeliver the amended Specifications and Statement of Work to Client for approval.
- (4) If the parties, acting reasonably, are unable for any reason to agree upon the Specifications or Statement of Work, Client or Prometheus may terminate this Agreement in accordance with paragraph 10.1(c) or paragraph 10.2(b) hereof, respectively.
- (5) Within five (5) business days of approval by Client (deemed or actual) of the Specifications and Statement of Work, Client shall notify Prometheus in writing whether or not Client accepts the Specifications and Statement of Work and desires to proceed with the Statement of Work. If Client notifies Prometheus of its non-acceptance of the Specifications and Statement of Work and desire not to so proceed, Client may terminate this Agreement in accordance with paragraph 10.1(d) hereof. In the event that Prometheus receives no such communication within the time period specified, Client shall be deemed to have accepted the Specifications and Statement of Work, the parties shall append the completed Specifications and Statement of Work to this Agreement as Schedules, and Prometheus shall commence the design and development of the Deliverables in accordance with the Statement of Work.

3.2. Amendments Following Approval

If Client requests changes to the Specifications or Statement of Work after the same have been completed and accepted by both parties, such changes shall be implemented only upon the prior written consent of Prometheus, acting reasonably. Prometheus's consent shall be conditional upon a review of costs, milestones, availability of personnel and any other factor, which may relate to the changes. If agreed, services encompassing such changes to the Specifications or Statement of Work will only commence upon the execution of an appropriate amending schedule or new schedule outlining the changes to the scope of work, fee structure and other agreed upon terms or conditions.

4. Deliverables

4.1. Development and Acceptance Testing

- (1) Prometheus shall use commercially reasonable efforts to, on or prior to the dates required therefor in the Statement of Work, develop, deliver, and install the Deliverables or any portion thereof, and shall deliver to Client the Documentation and any other additional instructions pertaining to such Deliverables. Prometheus shall notify Client in writing that the Deliverables or any portion thereof are ready for acceptance testing in accordance with the Statement of Work. Client shall have a period of ten (10) business days (the "Acceptance Testing Period") from the date of such notice to inspect, operate, evaluate and test the Deliverables or any portion thereof delivered to Client for acceptance testing (the "Acceptance Test"). Prometheus shall meet the reasonable requests of Client for telephone advice and assistance in connection with the Acceptance Test to be performed by Client.

- (2) If, prior to the end of the Acceptance Testing Period, Client completes the Acceptance Test, it shall provide immediate written notice of such completion to Prometheus. However, if during the Acceptance Testing Period Client notifies Prometheus in writing (a "Deficiency Notice") of any significant functional or technical deficiencies in the Deliverables or any portion thereof, Prometheus shall correct such deficiencies within five (5) business days following the Deficiency Notice, or provide a timeline if the correction is deemed to require more than five (5) business days to rectify. A "significant functional or technical deficiency" refers to any deficiency that renders the Deliverables or any portion thereof inoperable or otherwise materially non-complying as provided for in the Specifications. In such event, the Acceptance Testing Period shall be extended for the applicable period of time and the provisions of this paragraph 4.1(2) shall re-apply.
- (3) Client shall be deemed to have completed the Acceptance Test and have accepted the Deliverables or any portion thereof (the "Acceptance Date") on the earlier of: (a) the provision by Client of a written notice to Prometheus specifying that Client has completed the Acceptance Test; or (b) the expiry of any applicable Acceptance Testing Period if Client does not provide a Deficiency Notice to Prometheus during such Acceptance Testing Period.

4.2. Proprietary Rights

- (1) Client Content, together with all Intellectual Property Rights therein, shall remain the sole and exclusive property of Client.
- (2) Subject to Client's ownership interest in Client Content all materials, including, but not limited, to any computer software (in object code and source code form), programming code, HTML or other script, data, information or other materials developed for or provided to Client by Prometheus (collectively "Prometheus Materials") or secured by Prometheus from third party suppliers (collectively "Third-Party Materials") pursuant to this Agreement, together with all Intellectual Property Rights therein, shall remain the sole and exclusive property of Prometheus or such third party suppliers, as the case may be. Notwithstanding the foregoing any of Client's Confidential Information incorporated in the Deliverables shall remain owned exclusively by Client.
- (3) Subject to the payment by Client of the applicable charges due to Prometheus hereunder, Prometheus hereby grants to Client a non-exclusive, royalty-free, perpetual, worldwide and, other than expressly provided for herein, non-transferable license to: (i) use the Prometheus Materials in the form provided to Client by Prometheus in the Deliverables and (ii) modify or adapt the Prometheus Materials to the extent necessary or desirable to maintain, enhance, or continue the development of the Deliverables for Client's use in conjunction with Client's Web Site in accordance with the terms of this Agreement. The foregoing license to the Prometheus Materials may be assigned to an acquirer of or an Affiliate of Client where Client also assigns all its rights to the Deliverables to such acquirer or Affiliate, and provided that such acquirer or Affiliate accepts all the terms of the foregoing license. To the extent any Third Party Materials are incorporated in the Deliverables or delivered to Client pursuant to this Agreement, Prometheus shall secure for Client a license to use such Third-Party Materials in the Deliverables on such terms as may be prescribed in such third party license.

4.3. Warranty

Prometheus warrants that the Deliverables, when properly installed on and used in conjunction with the hardware, software and operating system prescribed therefor in the Specifications, shall operate and function in substantial conformity with the operational,

functional and technical specifications of the Specifications. Client acknowledges that the Deliverables are complex and technical in nature and may have minor or inherent defects. Prometheus will use all commercially reasonable efforts to provide all programming and remedial services necessary to correct documented errors or to provide a Workaround for same provided such errors are caused by a Defect in the Deliverables and such Deliverables have not been altered except by or with the consent of Prometheus. This warranty shall be valid for a period of one (1) month (the "Warranty Period") from the Acceptance Date.

5. Charges

5.1. Client shall pay to Prometheus the charges for all work (including but not limited to the Services as specified in the Statement of Work) in accordance with the following schedule (or as specified in SOW): %50 of estimated charges payable before beginning of work. Hourly charges shall be deducted from the initial payment until complete depletion of amounts paid; the remaining charges shall be invoiced on the 1st and 15th day of each month. Prometheus reserves the right to increase the charges for its services upon at least sixty (60) days' prior written notice to Client of any price increase, provided that any such increases will be consistent with Prometheus's then current rates for such services.

5.2. In the event that this Agreement is terminated pursuant to paragraphs 10.1(c), 10.1(d) or 10.2(b) hereof, Client agrees to pay Prometheus all reasonable time charges incurred by Prometheus for the development of the Specifications and Statement of Work (regardless of their state of completion), upon the issuance by Prometheus of an invoice therefore, in accordance with the rate schedule.

5.3. If Client fails to pay any sum due hereunder, Prometheus reserves the right to charge and Client agrees to pay interest at the rate of 1% per month (12% per annum) on any sum outstanding at the end of the fifteen (15) day period following the applicable due date or the date of any invoice, as the case may be. The charges specified in the Statement of Work do not include federal, provincial, state, municipal, excise, sales, use, goods and services or other similar taxes. Any such taxes paid or payable by Prometheus based on this Agreement or any service rendered or products supplied hereunder, except for taxes based on Prometheus's net income or property, shall be borne by Client provided all such taxes are independently set out in the Statement of Work or any invoice issued therefor by Prometheus.

5.4. Client acknowledges that Prometheus's performance of the Services is dependent in part on Client's actions, including without limitation prompt delivery of or access to Client Content, and that any dates or time periods relevant to the performance of the Services by Prometheus shall be appropriately extended to account for any delays due to Client. If any such delay due to Client remains uncorrected after the reception by Client of a notice from Prometheus with respect to such failure, Prometheus may charge to the Client any additional time charges (at Prometheus's rates then in effect) or expenses reasonably incurred by Prometheus as a result of any such delay not reasonably corrected by the Client.

6. Representations, Warranties, and Covenants

6.1. Prometheus Representations, Warranties, and Covenants

Prometheus represents, warrants and covenants to Client as follows and acknowledges that Client has relied upon the completeness and accuracy of such representations, warranties and covenants in entering into this Agreement:

- (1) Prometheus shall perform its obligations hereunder in a professional and workmanlike manner and in accordance with accepted industry standards;
- (2) Prometheus has the full power and authority to transfer or license the rights in the Deliverables herein contemplated without the consent of any other person;
- (3) to the best of Prometheus's knowledge, the Deliverables and the Services do not and will not infringe the Intellectual Property Rights of any person;
- (4) Prometheus has not and will not grant any rights or licenses to any other intellectual property or technology, including the Deliverables, that would conflict with Prometheus's obligations or Client's rights under this Agreement, or enter into any other agreement or understanding that would conflict with Prometheus's obligations or Client's rights under this Agreement;
- (5) no portion of the Deliverables contains or will contain any disabling mechanism or protection feature designed to prevent its use including any clock, timer, counter, computer virus, worm, software lock, drop dead device, Trojan-horse routine, trap door, time bomb or any other codes or instructions that may be used to access, modify, replicate, distort, delete, damage or disable the Deliverables, Client's software, Client's computer systems or other software or hardware, except as otherwise specifically designed into the Deliverables and to which Client has actual knowledge and has consented; and
- (6) that either:
 - (I) all date elements represented in or by the Deliverables permit the specification of century to eliminate date ambiguity, or
 - (II) for any date element represented in or by the Deliverables without an indication of the century, the correct century is unambiguous for all manipulations involving that date element, such that the Deliverables will be fully capable of operating as required to accommodate the year 2000 and beyond without any material change to or interruption in the functionality of the Deliverables, provided all other products other than the Deliverables, including without limitation all hardware and software used with the Deliverables, properly exchange accurate date and date-related data with each other.

6.2. Client Representations, Warranties, and Covenants

- (1) Client represents that the use and/or embodiment by Prometheus in the Deliverables of any Client Content provided by Client to Prometheus hereunder, does not and will not infringe the Intellectual Property Rights of any person; and
- (2) Client covenants that it will be solely responsible for and will pay all sums due to any third parties entitled to receive any payments in connection with any Deliverables provided to Client by Prometheus hereunder or any materials which Client otherwise requires Prometheus to obtain in connection with the Services.

6.3. Corporate Warranties

Each party represents and warrants to the other that the execution and delivery of this Agreement and the performance of the covenants and agreements herein contained are not limited or restricted by and are not in conflict with any contract, agreement or other instrument to which either party is bound or by any rights or interests of any other person.

7. Confidentiality

All confidentiality issues shall be addressed by previously signed Non Disclosure Agreement

8. Indemnification

8.1. Indemnification by Prometheus

- (1) Prometheus will indemnify, defend and hold Client harmless against any and all claims, damages and expenses (including reasonable legal fees) that use of the Deliverables or Services by Client in accordance with this Agreement infringes the Intellectual Property Rights of any third party.
- (2) Prometheus's obligations hereunder are expressly conditioned upon all of the following: (a) prompt written notice to Prometheus of any such claim of infringement of which Client has actual knowledge; (b) Prometheus is given and has full and complete control over the defense and settlement of such claim, provided that any such defense or settlement in no way derogates from Client's rights under this Agreement; and, (c) Client provides to Prometheus reasonable assistance in the defense of such claim.
- (3) If such claim has occurred or, in Prometheus's opinion is likely to occur, Client agrees to permit Prometheus, at Prometheus's option and expense, either to procure for it the right to continue using Deliverables or to replace or to modify same so that it becomes non-infringing, provided that any such replacement or modification is substantially in accord with the Specifications and in no way derogates from Client's rights under this Agreement. If neither of the foregoing alternatives is reasonably available: (a) Client agrees, upon written notice from Prometheus, to return or to destroy the original and all copies of the Deliverables; and (b) Prometheus agrees to reimburse Client on the following basis: (i) Prometheus, acting reasonably, will determine the expected usage life of the Deliverables; (ii) Prometheus shall then divide the actual time Client has had uninterrupted usage of the Deliverables by the expected usage life and shall multiply this ratio against those fees and charges paid by Client to Prometheus in connection with such affected Deliverables (collectively, the "Software Charges"); and (iii) the amount so determined shall be deducted from such Software Charges and the result shall be the reimbursement to be paid by Prometheus to Client pursuant to this provision.
- (4) Prometheus shall have no obligation to defend Client or to pay damages or expenses incurred by Client for any claim of infringement arising from: (i) Client's designs, specifications or express instructions regarding the Deliverables; (ii) use of the Deliverables by Client with any hardware or software other than that specified in the Specifications, if such claimed infringement would have been avoided by not using such other hardware or software; or (iii) modification to the Deliverables by Client without Prometheus's written authorization, where such modification is directly or indirectly responsible for the claimed infringement.

8.2. Indemnification by Client

- (1) Client agrees to and does hereby indemnify, defend and hold Prometheus harmless against any and all claims, damages and expenses (including reasonable legal fees) that use of the Client Content by Prometheus in accordance with this Agreement infringes the Intellectual Property Rights of any third party.
- (2) Client's obligations hereunder are expressly conditioned upon all of the following: (a) prompt written notice to Client of any such claim of infringement of which Prometheus has actual knowledge; (b) Client is given and has full and complete

control over the defense and settlement of such claim, provided that any such defense or settlement in no way derogates from Prometheus's rights under this Agreement; and, (c) Prometheus provides to Client reasonable assistance in the defense of such claim.

8.3. Mutual Indemnification

Each of the parties hereto (the "Indemnifying Party") agrees to and does hereby indemnify, defend and hold harmless against any and all claims, damages and expenses (including reasonable legal fees) arising out of or connected with: (i) any acts, errors or omissions by the Indemnifying Party or any of its agents; or (ii) any actual or alleged material breach of this Agreement by the Indemnifying Party or its agents, or any claim which is inconsistent with any warranties or representations made by the Indemnifying Party hereunder.

8.4. The provisions of this section 8 shall survive the expiration or termination of this Agreement for any reason whatsoever.

9. Limitation of Liability

9.1. OTHER THAN AS EXPRESSLY NOTED IN THIS AGREEMENT, Prometheus MAKES NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED BY OPERATION OF LAW, USAGE OF TRADE, COURSE OF DEALING OR OTHERWISE (INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OR WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) WITH RESPECT TO ANY SOFTWARE PRODUCT OR SERVICE SUPPLIED UNDER THIS AGREEMENT. Prometheus EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW.

9.2. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

EXCEPT FOR A BREACH OF CONFIDENTIALITY PROVISIONS OR EXPRESS INDEMNIFICATIONS RELATING TO INTELLECTUAL PROPERTY RIGHTS HEREUNDER, Prometheus's TOTAL CUMULATIVE LIABILITY ARISING IN ANY MANNER UNDER OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AGGREGATE OF THE AMOUNTS PAID BY CLIENT TO Prometheus UNDER THIS AGREEMENT.

THE FOREGOING LIMITATIONS APPLY REGARDLESS OF THE CAUSES OR CIRCUMSTANCES GIVING RISE TO CLIENT'S CLAIM EVEN IF SUCH CLAIM IS BASED ON NEGLIGENCE OR OTHER TORTS OR BREACH OF CONTRACT INCLUDING A FUNDAMENTAL BREACH OR BREACH OF A FUNDAMENTAL TERM.

10. Termination

10.1. Client shall have the right to terminate all or any part of this Agreement:

(a) forthwith if Prometheus ceases to carry on business, becomes or is declared insolvent or bankrupt, is subject to any proceedings relating to its liquidation, insolvency or for the appointment of a receiver or similar officer for it, makes a general assignment for the benefit of all or substantially all of its creditors, or enters

into an agreement for the composition, extension or readjustment of all or substantially all of its obligations;

- (b) forthwith upon written notice to Prometheus if Prometheus defaults in the performance or observance of any of its obligations under this Agreement and fails to cure such default within thirty (30) days of receiving written notice of such default from Client;
- (c) forthwith upon written notice to Prometheus in the event that Client and Prometheus cannot agree upon the Specifications or Statement of Work as contemplated in paragraph 3.1(4) hereof, provided that Client shall pay to Prometheus all charges due to Prometheus pursuant to section 5.2 hereof;
- (d) forthwith upon written notice to Prometheus in the event that Client does not wish to accept the Specifications and Statement of Work and does not wish to proceed with the Statement of Work as contemplated in paragraph 3.1(5) hereof, provided that Client shall pay to Prometheus all charges due to Prometheus pursuant to section 5.2 hereof; or
- (e) at any time during the term of this Agreement forthwith upon giving Prometheus sixty (60) days prior written notice provided that Client shall pay all applicable charges incurred by Client under this Agreement up to and including the last day of the notice period.

10.2. Prometheus shall have the right to terminate all or any part of this Agreement:

- (a) forthwith if Client ceases to carry on business, becomes or is declared insolvent or bankrupt, is subject to any proceedings relating to its liquidation, insolvency or for the appointment of a receiver or similar officer for it, makes a general assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, extension or readjustment of all or substantially all of its obligations;
- (b) forthwith upon written notice to Client in the event that Client and Prometheus cannot agree upon the Specifications or Statement of Work as contemplated in paragraph 3.1(4) hereof;
- (c) any failure of Client to pay when due any amount payable to Prometheus under this Agreement which continues for more than ten (10) days following notice by Prometheus to Client that this Agreement will be terminated for non-payment of amounts due; or
- (d) forthwith upon written notice to Client if Client defaults in the performance or observance of its obligations under this Agreement and fails to cure such default within thirty (30) days of receiving written notice of such default from Prometheus.

11. General

11.1. Entire Agreement

This Agreement contains the entire agreement between Prometheus and Client with respect to the subject matter hereof as of the date hereof, and supersedes all prior agreements, negotiations, representations and proposals, written and oral, relating to its subject matter.

11.2. Amendments

Neither this Agreement, nor any term or provision hereof, nor any Schedule or document

made a part hereof or agreed to in connection herewith, may be amended, modified or waived in any respect whatsoever except in writing signed by both parties.

11.3. Non-Waiver

No delay on the part of either party in exercising any right or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right or remedy under this Agreement preclude any other or further exercise of such right or remedy. Failure of either party to enforce compliance with any term, provision or condition of this Agreement shall not constitute a waiver of such term or condition, and shall not constitute a precedent.

11.4. Severability

It is the intention of the parties that, if any provision of this Agreement shall be held invalid or unenforceable in any respect, such provision shall be enforced to the maximum extent permitted by law, and that the remaining provisions of this Agreement shall continue in full force and effect.

11.5. Assignment

This Agreement shall be binding upon and inure to the benefit of Prometheus and Client and their respective successors and permitted assigns. Neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld.

11.6. Subcontractors

Prometheus shall have the right to subcontract with others for the performance of the Services hereunder provided that no such subcontracting shall relieve Prometheus of any liability with respect to the performance of the Services hereunder.

11.7. Non-Solicitation

Each of the parties hereto covenants and agrees with the other that it will not at any time during the period commencing on the date hereof and ending on the date six months following the termination of this Agreement, directly or indirectly, in any manner whatsoever, approach, solicit, or hire any employee or consultant of the other or attempt to direct or encourage any such employee or consultant away from the other.

11.8. Independent Parties

Prometheus is providing services to Client as an independent contractor. At no time shall either party be deemed to be the agent, partner or joint venturer of the other party, and each party and its employees shall always remain independent of the other party.

11.9. Force Majeure

With the exception of non-payment by Client of any fees or charges due to Prometheus hereunder, each party shall be excused from performance under this Agreement for any period of time and to the extent that it is prevented from performing any of its obligations under this Agreement, in whole or in part, as a result of delays caused by the other party or by an act of God, natural disaster, power interruption, acts of the government of the United States or Canada or of any State or Province or governmental agency or official thereof, court order, third party non-performance, or other cause, events or circumstances beyond its reasonable control. Such non-performance will not be a default under this Agreement nor a ground for termination of this Agreement so long as the excused party makes reasonable efforts to remedy, if and to the extent reasonably possible, the cause for such non-performance.

11.10. Governing Law and Jurisdiction

This Agreement, and the rights and obligations of the parties, shall be governed by, subject to and interpreted in accordance with the laws of the Province of Ontario and the laws of Canada applicable thereto, without regard to conflict of laws provisions thereof. The parties hereby consent to the non-exclusive jurisdiction of the courts in the Province of Ontario.

11.11. Dispute Resolution

Any dispute, controversy or claim arising out of or in connection with this Agreement (a "Dispute") shall be dealt with in accordance with this Section.

- (a) Meeting to negotiate resolution. A meeting shall be held between the parties hereto promptly after a Dispute has arisen. The meeting will be attended by representatives of the parties with decision-making authority to settle the Dispute. At the meeting, the parties will attempt in good faith to negotiate a resolution of the Dispute.
- (b) Mediation. If, within 30 days after a Dispute has arisen (the "Negotiation Period"), the parties have not succeeded in negotiating a resolution of the Dispute, the Dispute shall be submitted to mediation. The parties will jointly appoint a mutually acceptable mediator. If the parties are unable to agree upon the appointment of a mediator within 20 days from the conclusion of the Negotiation Period, then the mediator will be selected with the assistance of the Arbitration and Mediation Institute of Ontario Inc. The parties agree to participate in good faith in mediation and related negotiations for a period of 30 days. The parties may enter into an agreement prior to the mediation to set out the procedures to be used during the mediation. The parties will bear equally the cost of the mediation.
- (c) The procedures for the resolution of the disputes set out in this Section do not preclude recourse to the courts for interim or interlocutory, equitable or legal relief. If the parties are not successful in resolving the Dispute through the mediation within 90 days of the end of the Negotiation Period, then the Dispute shall be settled by arbitration in accordance with the Arbitrations Act (Ontario) and, except where inconsistent with this Section, the Rules of Procedure of the Arbitration and Mediation Institute of Ontario Inc. If the arbitrator fails to render a decision within 30 days following the final hearing of the arbitration, any party to the arbitration may terminate the appointment of the arbitrator and a new arbitrator shall be appointed in accordance with these provisions.
- (d) If the parties are unable to agree on an arbitrator or if the appointment of an arbitrator is terminated in the manner provided for above, then any party to this Agreement shall be entitled to apply to a judge of the Ontario Court of Justice, General Division to appoint an arbitrator and the arbitrator so appointed shall proceed to determine the matter *mutatis mutandis* in accordance with the provisions of this Section. Any award or decision made by an arbitrator appointed under this Article is final and binding upon the parties to this Agreement and may be enforced in the same manner as a judgment or order to the same effect pursuant to Section 13 of the Arbitrations Act (Ontario) and no appeal shall lie therefrom.
- (e) Interim Relief. Notwithstanding the foregoing, nothing in this Section shall preclude either party from seeking interim or provisional relief including, without limitation, a restraining order or an injunction.

11.12. Currency

Unless otherwise indicated, all amounts referred to in this Agreement are in Canadian dollars.

11.13. Notice

All notices under this Agreement, including requests, demands, elections and other communications pursuant to this Agreement shall be in writing and shall be duly given only if personally delivered or mailed by prepaid registered or certified mail (against receipt), delivered by private overnight courier service, or transmitted by confirmed facsimile copy to the party for which it is intended as follows:

To Prometheus Software:
300-615 Yonge Street
Toronto, Ontario M4Y 1Z5 CANADA

Facsimile: (416) 866-8611

Attention: CEO

Any notice so given shall be deemed to have been received on the date on which it was personally delivered or transmitted by confirmed facsimile copy or on the date received as set forth on the return receipt if sent by registered or certified mail or overnight courier service. Any party may change its address for purposes of receipt of any such communication by giving ten (10) business days prior written notice of such change to the other party in the manner prescribed above.

11.14. Publicity

Prometheus may use the name of and identify Client as a Prometheus client, in advertising, press releases and other publicity, or materials distributed or displayed to prospective clients of Prometheus. Client hereby agrees to acknowledge Prometheus as the creator of the Deliverables in an "acknowledgments page" on any web site in which the Deliverables exists provided, however, that Client agrees to remove any reference to Prometheus at any time upon Prometheus's request

11.15. Counterparts

This Agreement may be executed by the parties in one or more counterparts, including by facsimile transmission, each of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each party and delivered to the other party.