M3 APPLICATION SERVICES AGREEMENT

This **APPLICATION SERVICES AGREEMENT** (the "**Agreement**") is by and between Metastorm Inc., a Maryland corporation having a principal place of business at 500 East Pratt Street, Suite 1250, Baltimore, Maryland 21202 ("**Provider**"), and you ("**Licensee**"). On first use of the Application (as defined below) you will, by checking the box next to text that reads "I have read and accept the terms and conditions", be agreeing to be bound by these terms and conditions. If you are or will be accepting this Agreement on behalf of another person, company, or other legal entity, you represent and warrant that you have full authority to bind that person, company, or legal entity to these terms and conditions. If you do not agree to these terms and conditions, press the "decline" button or close your web browser and you will be unable to use the Application.

WHEREAS, Provider owns the Application; and

WHEREAS, Licensee desires to obtain from Provider a temporary license to access and/or utilize certain applications through means such as the Internet and Provider is willing to grant to Licensee a license to access and/or utilize such software applications, as applicable, in accordance with the terms and conditions contained herein.

NOW THEREFORE, the parties hereby agree as follows:

1. DEFINITIONS. The following terms shall have the following meanings:

1.1 "**Application**" shall mean the M3 software application or applications, individually and and/or severally operating on Application Servers.

1.2 **"Application Server"** shall mean servers utilized by Provider.

1.3 "**Application Update**" shall mean any version of the Application or the Licensed Software, developed subsequent to the date you accept this Agreement, which implements minor improvements or augmentations, which corrects failures of the Application and/or the Licensed Software, and/or which implements additional features or functions.

1.4 **"Marks"** means logos, trademarks, service names, trade names, or domain names to be provided by one party to the other in accordance with this Agreement.

1.5 **"End User"** shall mean any employees, consultant, contractor or agent of the Licensee and/or its own customers and vendors who accesses, connects to, logs onto or otherwise uses the Application, whether by means of (i) an online connection through the Internet, (ii) direct telecommunications connection to the Application Server, or (iii) any other form of connection to the Application Server, such as through use of an intranet; and who are authorized to access and use the Application through user identifications and passwords provided by Licensee or Provider (at Licensee's request).

1.6 **"Provider Technology"** shall mean the Application, Application Server, Provider Marks, and Application Updates and related intellectual property rights for the Term (as defined in Section 9.1) pursuant to the terms of this Agreement.

2. ASP LICENSE.

2.1 **Application License.** Subject to the terms and conditions contained in this Agreement, and further subject to any prior licenses or third-party agreements with respect thereto, Provider hereby grants to Licensee, and Licensee hereby accepts, a worldwide, non-exclusive, non-transferable right and license to access the Application only for Licensee's internal business through its interface during the Term, solely in the form of compiled, executable code, and solely through the Application Server during

the Term. Any rights not expressly granted by Provider to Licensee are reserved by Provider, and all implied licenses are disclaimed. Licensee shall not exceed the scope of the licenses granted hereunder.

2.2 Restrictions. Licensee shall not (i) assign, sublicense, distribute, market, co-brand, private label, grant third parties the right to link or access to the Licensed Software, Application or the Application Server, (ii) sell, lease, rent, distribute, convey or otherwise transfer, or pledge as security or otherwise encumber, the rights and licenses granted hereunder with respect to the Provider Technology, or (iii) reverse engineer, decompile, modify, create derivative works or disassemble any of the Provider Technology. In no event may Licensee use any of the Provider Technology to provide software services in the nature of a service bureau, commercial hosting, or commercial information technology services to such third parties or to resell or distribute to third parties any of Licensee's services or applications derived or developed from any of the Provider Technology.

2.3 Third-Party Constraints. Licensee shall undertake all measures necessary to ensure that its use of the Provider Technology complies in all respects with any contractual or other legally binding obligations of Provider to any third party. Licensee shall not enter into any contractual relationship or other legally binding obligation with any third party which shall have the purpose or effect of encumbering the use by Provider of the Provider Technology.

2.4 Quality Control of Marks. Both parties understand and agree that use of the Marks shall not create any right, title or interest in or to such Marks and that all such uses and goodwill associated with the Marks will be for the benefit of the party who owns the Mark.

3. HOSTING, AND CONNECTIVITY FOR THE APPLICATION.

3.1 Hosting of the Application. Provider shall, at its own expense, provide for the installation of the Application on one or more Application Servers. Provider shall bear responsibility for the operation and maintenance of the Application Server hardware, its operating system and/or its platform software, and any third-party application software associated with, or necessary for, the operation and functioning of the Application Server, including functions associated with access to the Application in accordance with this Agreement.

3.2 Link to the Application Server. Provider shall not be responsible for the Licensee's and End User's connection to the Application Server and Application. Licensee shall provide, operate and maintain any computer equipment and operating system software required to use the Application. Such equipment and software shall include the components and conform to the minimum configuration requirements specified in the Provider documentation.

3.3 Provider Technology. Provider will be solely responsible for creating, managing, editing, reviewing, deleting and otherwise controlling the Provider Technology.

4. LICENSEE AND END USER USE OF THE APPLICATION.

4.1 End User Access to Services; Compliance. Subject to the terms and conditions herein, Licensee shall be permitted to allow any End User to access and use the Application through the Application Server. Licensee shall ensure that any such End User shall be provided Provider's standard End User License Agreement as updated from time to time by Provider and shall be responsible for End User's compliance therewith with respect to End User's use of the Licensed Software.

4.2 Authorization. Licensee agrees to notify Provider immediately of any unauthorized use of the Application or any other breach of its security including, but not limited to, unauthorized use of a password. Provider has no obligation to monitor the use of the Application by End Users and/or the content of any user session. However, Provider reserves the right at all times to monitor, review, retain and/or disclose any information as necessary to satisfy any application law, regulation, legal process or governmental request.

4.3 Data Access. During the Term, Provider may view, review or otherwise analyze the data stored, inputted or otherwise collected by the Application for maintenance, system administration, technical support, and for any other purpose necessary for Provider to perform under this Agreement and/or to comply with laws and regulations. All Licensee content is irrevocably deleted upon termination. Licensee shall be solely responsible for making and retaining copies of its content from the Application prior to termination or expiration, provided that upon Licensee request, Provider may retain Licensee content for additional periods for a reasonable fee.

5. PROPRIETARY RIGHTS.

5.1 Ownership/Intellectual Property Rights. Licensee acknowledges that, as between the parties, Provider retains all right, title, and interest in and to all components of the Provider Technology and related intellectual property rights. Provider acknowledges, as between the parties, Licensee retains all right, title and interest in and to User Data (as defined in Section 5.2) and related intellectual property rights.

5.2 End User Information. Licensee shall be the sole and exclusive owner of all information collected, inputted or otherwise provided to Provider by End Users accessing the Application (collectively, the "**User Data**"). During the Term, Licensee grants Provider a non-exclusive right and license to use the User Data to provide the Provider Technology to the Licensee.

6. WARRANTIES.

6.1 Mutual Representations. Each party hereby represents and warrants (i) that it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation; (ii) that it has the legal right and authority to enter into and perform its obligations under this Agreement; (iii) that the execution and performance of this Agreement will not conflict with or violate any provision of any law having applicability to such party; and (iv) that this Agreement, when executed and delivered, will constitute a valid and binding obligation of such party and will be enforceable against such party in accordance with its terms.

6.2 Compliance with Laws. Licensee shall undertake all measures necessary to ensure that its use of the Provider Technology complies in all respects with all applicable laws, statutes, regulations, ordinances or other rules promulgated by governing authorities having jurisdiction over the parties or the Provider Technology.

6.3 No Other Warranties. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, EACH PARTY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED AND/OR STATUTORY, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. Provider does not warrant that the Application will meet Licensee's requirements or that the operation of the Application will be uninterrupted or error-free or that all errors will be corrected. Licensee specifically agrees that Provider shall not be responsible for unauthorized access to or alteration of a Licensee and/or an End User's transmissions or data, any material or data sent or received or not sent or received.

7. INDEMNITY.

7**.1 Indemnity by Licensee.** Licensee shall indemnify, defend and hold harmless Provider, its affiliates and their officers, directors, employees, consultants and agents against all claims, losses, damages, liabilities, costs and expenses, including reasonable attorneys' fees, to the extent that such claims arise out of (i) the use of, or the inability to use, the Provider Technology by End Users, and (ii) a breach of any representation, warranty or obligation found herein.

7**.2 Provider's Indemnity.** Except with respect to circumstances where Licensee shall indemnify Provider pursuant to Section 7.1, Provider shall indemnify, defend and hold harmless Licensee, its affiliates and their officers, directors, employees, consultants and agents against all claims, losses,

damages, liabilities, costs and expenses, including reasonable attorneys' fees, to the extent that such claims arise out of the infringement by the Provider Technology of any third party copyright, trademark, trade secret, patent or other intellectual property right.

7**.3** **Injunction.** In the event of actual or alleged infringement or injunction, Provider shall have the right at its expense and option, and as Licensee's sole and exclusive remedy, to: (i) procure for Licensee the right to continue using the Provider Technology; (ii) modify or replace the Provider Technology with compatible, functionally equivalent, non-infringing component(s); or (iii) terminate this Agreement without any liability. This subsection shall be Licensee's sole and exclusive remedy for intellectual property rights infringement.

8. LIMITATION OF LIABILITY.

8.1 **Cumulative Liability**. THE CUMULATIVE LIABILITY OF PROVIDER TO LICENSEE FOR ALL CLAIMS ARISING FROM OR RELATING TO THIS AGREEMENT OR THE PROVIDER TECHNOLOGY, INCLUDING ANY CAUSE OF ACTION SOUNDING IN CONTRACT, TORT, OR STRICT LIABILITY, SHALL NOT EXCEED ONE THOUSAND DOLLARS ($1,000). THIS LIMITATION OF LIABILITY IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

8.2 **Exclusion of Damages.** IN NO EVENT SHALL PROVIDER BE LIABLE TO LICENSEE FOR ANY INCIDENTAL, DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, COSTS OF DELAY, ANY FAILURE OF DELIVERY, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA OR DOCUMENTATION OR LIABILITIES TO THIRD PARTIES ARISING FROM ANY SOURCE, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION UPON DAMAGES AND CLAIMS IS INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE.

9. TERM AND TERMINATION.

9**.1** **Term.** The term of this Agreement shall be thirty (30) days from the Effective Date. This Term may be extended for additional 30-day terms based on mutual agreement.

9**.2** **Termination.** Either party may terminate this Agreement upon ten (10) days' notice. Upon the effective date of expiration or termination, all licenses and rights hereunder shall terminate immediately. After expiration or termination, Licensee shall no longer have access to the Application and shall remove any representations or references to the Application from Licensee's system.

9**.3** **Survival.** Any provision that by its nature survives shall survive expiration or termination of this Agreement.

10. GENERAL PROVISIONS.

10.1 **Governing Law.** This Agreement will be governed and construed in accordance with the laws of the State of Maryland without giving effect to its conflict of laws principles and without application of any applicable Uniform Computer Information Transaction Act. Any suit hereunder shall be brought exclusively in the federal or state courts of the State of Maryland, and both parties consent to the jurisdiction thereof.

10.2 **Publicity.** Provider may use and publish your name in its customer lists, lists of referrals for other customers (or potential customers), and in other promotional information, including, but not limited to, press releases, brochures, reports, letters, white papers, and electronic media such as e-mail or Web pages. Except as set forth in in the immediately preceding sentence, neither party shall issue a press release regarding this relationship without the other party's prior written approval. Neither party

shall disclose the terms of this Agreement to any third party, except as required by law or to potential investors or merger parties under standard confidentiality restrictions.

10.3 Severability; Headings. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision. Headings are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section, or in any way affect this Agreement.

10.4 Independent Contractors. The parties to this Agreement are independent contractors, and no agency, partnership, franchise, joint venture or employee-employer relationship is intended or created by this Agreement. Neither party may take any actions which are binding on the other party.

10.5 Notice. Any notices required or permitted hereunder shall be given to the appropriate party at the address specified above or at such other address as the party shall specify in writing. Unless otherwise specified, such notice shall be deemed given: upon personal delivery; if sent by fax, upon confirmation of receipt; or if sent by certified or registered mail, postage prepaid, three (3) days after the date of mailing.

10.6 Entire Agreement; Waiver. This Agreement sets forth the entire understanding and agreement of the parties, and supersedes any and all prior or contemporaneous oral or written agreements or understandings between the parties, as to the subject matter of this Agreement. Except as provided herein, this Agreement may be changed only by a writing signed by both parties. Waiver by either party of a breach of any provision contained herein must be in writing, and no such waiver shall be construed as a waiver of any succeeding breach of such provision or a waiver of the provision itself.

10.7 Assignment. Licensee shall not assign or otherwise transfer this Agreement or any rights or obligations under this Agreement, in whole or part, without the prior written consent of Provider. Subject to the foregoing, this Agreement shall be binding and insure to the benefits of each party's successors and heirs.

10.8 Force Majeure. Neither party will be deemed in default of the Agreement to the extent that performance of its obligations (other than payment of money) or attempts to cure any breach are delayed or prevented by reason of any event beyond the reasonable control of such party, including any act of God (*i.e.*, fire, earthquake, natural disaster), act of government (*i.e.*, war, terrorism, embargo), or any other act or circumstance that is beyond the reasonable control of such party, provided that such party gives the other party prompt written notice thereof. Any delays caused by Licensee which impact costs associated with any Services will result in additional fees.