Application Service Provider Agreement

This Application Service Provider Agreement ("Agreement") is effective as of _____ ("Effective Date"), by and between AssetWorks LLC ("Provider"), with offices located at 168, Industry Drive, Pittsburgh, PA 15275 and [Client Name] ("Customer"), with offices located at [Client Address] _____, on the following terms and conditions:

1. **AGREEMENT OVERVIEW**
    Provider provides its proprietary application known as AssetMAXX ("Software") and associated services to support customers at either its data center located at 998 Old Eagle School Road, Suite 1215, Wayne, PA 19087 or a third party data center ("Data Center"). This Agreement describes the services to be provided by Provider and the respective responsibilities of the parties. This Agreement incorporates the following Attachments, which are hereby incorporated by reference and shall be considered an integral part of this Agreement:
    *   Attachment 1 Scope of Services
    *   Attachment 2 Fee Schedule

2. **SERVICES**
    Provider will perform the services ("Services") as described in the Scope of Services, set forth in Attachment 1. The general scope of services addressed by this Agreement includes the operation, maintenance and support of the Customer's Database for the Software provided under this Agreement. The Services specifically exclude operation and maintenance of the following:
    *   Customer hardware, including without limitation, Customer's servers, printers, network hardware (including routers and switches) and other computing equipment located at the Customer site;
    *   Customer licensed software other than noted in the Scope of Services; and
    *   Customer Local Area Networks ("LAN").

3. **TERM**
    The Term of the Agreement shall commence as of the Effective Date and shall continue for one year ("Initial Term") unless terminated earlier as set forth below. This Agreement shall renew on the anniversary of the Effective Date unless otherwise terminated by the Customer or Provider in writing prior to the renewal date ("Renewal Term"). If not terminated prior to the start of the Renewal Term, Customer owes Provider for the entire Renewal Term.

4. **FEES AND PAYMENT**
    4.1. Customer shall pay Provider the applicable fees as set forth in the Fee Schedule, Attachment 2.
    4.2. Provider shall invoice Customer upon the later of (i) signature of this Agreement, (ii) installation of Customer data, or (iii) annually on the anniversary of the Effective Date for any renewal. The invoice will include one line item reflecting the total amount of the 12-month agreement based on the number of user accounts ordered at inception. Additional monthly invoices will be sent to Customer for any additional user accounts created the previous month, as well as for any additional data conversion, training, or other related costs ordered by the Customer. All invoiced fees shall be due and payable within 30 days of the date of an invoice. All payments shall be made in United States Dollars without deduction for any taxes or withholding or other offset, and shall be sent to Provider's address set forth on the signature page of the Agreement. Any amounts not paid when due will be subject to interest accrued at twelve percent (12%) per annum, or the maximum rate permitted by law, if lower.
    4.3. Provider reserves the right to suspend or terminate this Agreement and Customer access to the Service if the Customer fails to timely pay any invoice and is not cured within ten (10) days. Customer will continue to be charged and hereby agrees to pay for Service during any period of suspension. Customer's failure to pay any invoice after this ten (10) day period shall constitute a material default hereunder and shall entitle Provider to

exercise any and all rights and remedies provided herein. Upon termination of this Agreement for any reason except a material breach by Provider, Customer will be obligated to pay the balance due on in accordance with Attachment 2 within thirty days of invoice date. In the event of a dispute between the parties that does not result in a termination of the Agreement, Customer agrees to make payments due under the Agreement pending the resolution of the dispute.

5. **RESPONSIBILITIES**
Provider's responsibilities are set forth in the Scope of Services, Attachment 1. The Customer is responsible for:

A. Assigning a primary and alternate customer representative to coordinate all communications and activities related to Provider services.
B. Providing user identification data and determining the appropriate security profile for each user.
C. All on-site printing. No print job will print at the Data Center. All physical printing requirements will be the responsibility of the Customer.
D. The purchase and installation of printers at Customer's sites for the Application being utilized as defined in the Scope of Services.
E. Installation, operation and maintenance of Customer's LAN, existing data communications configuration, hardware, or software at the Customer's site except as otherwise stipulated in the Scope of Services. This is defined as all lines, switches and routers from the Customer site up to the Provider's site.
F. User/site-based administrative tasks (e.g., *ad hoc* report generation, creation and printing).
G. Testing updates and fixes applied by Provider to applications used by Customer. With the exception of emergency fixes, Customer will test updates and fixes in the test environment and confirm testing results with Provider prior to their introduction to the production environment within a mutually agreed upon time frame.
H. Testing upgrades. Upgrades will be moved to production by the Provider at the end of the Customer testing period unless specific problems are documented in writing to Provider.
I. Although a Help Desk is available to support and assist Customer in diagnosing and resolving connectivity problems of all types, it is Customer's responsibility to diligently analyze suspected problems at the Customer location to determine their specific nature and possible causes before calling the Provider for assistance. Notwithstanding this diligence requirement, Customer is responsible for reporting of problems and Customer analysis of same to Provider in a complete and timely manner.

6. **OWNERSHIP OF DATA**
Customer shall not obtain any ownership rights, title or interest in the software, hardware or systems developed or employed by Provider in providing Services under the Agreement. Provider shall not obtain any ownership rights, title or interest to Customer's data files. Upon expiration or termination of the Agreement for any reason, Customer may obtain a copy of Customer's data files, as they exist at the date of expiration or termination pursuant Attachment 1"Obligations Upon Termination of Contract".

7. **WARRANTY DISCLAIMER/LIMITATION OF LIABILITY**
EXCEPT AS EXPRESSLY SET FORTH HEREIN, PROVIDER SPECIFICALLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED STANDARDS, GUARANTEES, OR WARRANTIES INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT AND ANY WARRANTIES THAT MAY BE ALLEGED TO ARISE AS A RESULT OF CUSTOM OR USAGE, ANY WARRANTY OF ERROR-FREE PERFORMANCE, OR ANY WARRANTY OF THIRD PARTY PRODUCTS, OR FUNCTIONALITY OF THE CUSTOMER'S HARDWARE, SOFTWARE, FIRMWARE, OR COMPUTER SYSTEMS. PROVIDER SHALL NOT BE LIABLE FOR ANY PUNITIVE,

EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, (INCLUDING BUT NOT LIMITED TO LOST DATA OR LOST REVENUES OR PROFITS, LOSS OF USE OR EQUIPMENT DOWN TIME, AND LOSS OF OR CORRUPTION TO DATA) ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT, AND EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CUSTOMER HEREBY AGREES THAT PROVIDER'S TOTAL LIABILITY FOR ANY AND ALL LIABILITIES CLAIMS, OR DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, HOWSOEVER CAUSED AND REGARDLESS OF THE LEGAL THEORY ASSERTED, INCLUDING BREACH OF CONTRACT OR WARRANTY, TORT, STRICT LIABILITY, STATUORY LIABILITY OR OTHERWISE, SHALL NOT, IN THE AGGREGATE, EXCEED FEES PAID TO PROVIDER DURING THE PREVIOUS 12-MONTH PERIOD. THE PARTIES ACKNOWLEDGE AND AGREE TO THE FOREGOING LIABILITY RISK ALLOCATION.

8. **TERMINATION FOR DEFAULT**

   8.1   Either party may terminate this Agreement if (i) the other party fails to perform a material obligation of the Agreement and such failure remains uncured for a period of 30 days after receipt of notice from the non-breaching party specifying such failure; or (ii) a party ceases to conduct business, becomes or is declared insolvent or bankrupt, is the subject of any proceeding relating to its liquidation or insolvency which is not dismissed within 90 days or makes an assignment for the benefit of creditors.

   8.2   Upon termination for whatever reason and regardless of the nature of the default (if any), Customer agrees to pay Contractor in full for all goods and/or services provided to, and accepted by, Customer under this Agreement and/or any task order hereto within 30 days of the invoice date.

9. **NOTICES**
   All notices under this Agreement will be in writing and will be delivered by personal service, facsimile or certified mail, postage prepaid, or overnight courier to such person and address as may be designated from time to time by the relevant party. Provider's initial notice address is set forth in the signature block below. The Customer's initial notice address is as follows:

   Name:
   Client:
   Address:
   City State Zip:
   Tel. No.
   Fax No.

10. **NON-WAIVER OF RIGHTS**
    The failure of either party to insist upon performance of any provision of this Agreement, or to exercise any right, remedy or option provided herein, shall not be construed as a waiver of the right to assert any of the same at any time thereafter.

11. **RIGHTS AND REMEDIES NOT EXCLUSIVE**
    Unless otherwise expressly provided herein, no right or remedy of a party expressed herein shall be deemed exclusive, but shall be cumulative with, and not in substitution for, any other right or remedy of that party.

12. **SEVERABILITY**
    If any provision of the Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any manner.

13. **ASSIGNMENT**
Neither the Agreement nor any duties or obligations hereunder shall be assigned or transferred by either party without the prior written approval of Provider, which approval may not be unreasonably withheld, delayed or denied.

14. **GOVERNING LAW; VENUE**
The Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania without regard to choice of law principles. Subject to Section 16 below, the parties agree that the sole jurisdiction and venue for actions related to the subject matter hereof shall be the state and U.S. Federal courts in the County of Delaware, Pennsylvania. Both parties consent to the jurisdiction of such courts and waive any objections regarding venue in such courts.

15. **INTERPRETATION**
The captions and headings used in this Agreement are solely for the convenience of the parties, and shall not be used in the interpretation of the text of this Agreement. Each party has read and agreed to the specific language of this Agreement; therefore no conflict, ambiguity, or doubtful interpretation shall be construed against the drafter.

16. **DISPUTES**
The parties will seek a fair and prompt negotiated resolution within ten (10) days of the initial notice of the dispute ("Dispute"). If the dispute has not been resolved after such time, the parties will escalate the issue to more senior levels. If the parties are unable to resolve any dispute at the senior management level, then any controversy, claim or Dispute arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. Before commencing any such arbitration, the parties agree to enter into negotiations to resolve the Dispute. If the parties are unable to resolve the Dispute by good faith negotiation, either party may refer the matter to arbitration. The arbitration shall take place in the County of Delaware, Commonwealth of Pennsylvania. The arbitrator(s) shall be bound to follow the provisions of this Agreement in resolving the dispute, and may not award any damages, which are excluded by this Agreement.

The decision of the arbitrator(s) shall be final and binding on the parties, and any award of the arbitrator(s) may be entered or enforced in any court of competent jurisdiction.

17. **MULTIPLE COPIES OF COUNTERPARTS OF AGREEMENT**
This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

18. **FORCE MAJEURE**
Neither party shall be liable for any failure of or delay in performance of its obligations (except for payment obligations) under this Agreement to the extent such failure or delay is due to acts of God, acts of a public enemy, fires, floods, power outages, wars, civil disturbances, sabotage, terrorism, accidents, insurrections, blockades, embargoes, storms, explosions, labor disputes (whether or not the employees' demands are reasonable and/or within the party's power to satisfy), failure of common carriers, Internet Service Provides, or other communication devices, acts of cyber criminals, terrorists or other criminals, acts of any governmental body (whether civil or military, foreign or domestic), failure or delay of third parties or governmental bodies from whom a party is obtaining or must obtain approvals, authorizations, licenses, franchises or permits, inability to obtain labor, materials, power, equipment, or transportation, or other circumstances beyond its reasonable control (collectively referred to herein as "Force Majeure Occurrences"). Any such delays shall not be a breach of or failure to perform this Agreement or any part thereof and the date on which the obligations hereunder are due to be fulfilled shall be extended for a period equal to the time lost as a result of such delays. Neither party shall be liable to the other for any liability claims, damages or other loss caused by or resulting from a Force Majeure Occurrence.

19.   **RELATIONSHIP OF PARTIES**
       Contractor is an independent contractor in all respects with regard to this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership, joint venture, agency, or other relationship other than that of contractor and customer.

20.   **THIRD PARTY BENEFICIARIES**
       This Agreement does not create, and shall not be construed as creating, any rights or interests enforceable by any person not a party to this Agreement.

21.   **WAIVER OR MODIFICATION**
       No provision of the Agreement may be waived or modified unless in writing specifically referencing this Agreement and signed by representatives of both parties against whom enforcement of the purported modification or waiver is sought. Waiver of default of any provision of the Agreement shall not operate or be construed as a waiver of any subsequent default of such provision, nor shall a waiver of any one provision of the Agreement be deemed to be a waiver of any other provision.

22.   **ENTIRE AGREEMENT; CONFLICTING PROVISIONS**
       The Agreement and any attachments thereto contain the entire agreement and understanding of the parties with respect to the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous proposals, discussions, agreements, Customer issued purchase order or document of like intent or purchase, understandings, commitments, representations of any kind, whether oral or written, relating to the subject matter hereof or the Services to be provided hereunder.

23.   **AUTHORIZATION**
       Each of the parties represents and warrants that the Agreement is a valid and binding obligation enforceable against it and that the representative executing the Agreement is duly authorized and empowered to sign the Agreement

24.   **SURVIVAL**
       The provisions of sections 4, 6, 7, 14, 16 and 22 shall survive the termination or expiration of this Agreement.

25.   **COUNSEL**
       By execution of this Agreement, each of the Parties acknowledges and agrees that it has had an opportunity to consult with legal counsel and that it knowingly and voluntarily waives any right to a trial by jury of any dispute pertaining to or relating in any way to the transactions contemplated by the Agreement, the provisions of any federal, state or local law, regulation or ordinance notwithstanding.

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[Signatures on the following page]
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Signatures

IN WITNESS WHEREOF, the parties have executed this Agreement through their duly authorized representative(s).

"Provider"	**"Customer"**
AssetWorks LLC	**[Client Name]**

_____ _____

Signature   Signature

Date: Date: _____

Michael B. Borello   Contact:
Division Vice President   Title:
168 Industry Drive   Address:
Pittsburgh, PA 15275   City, State, Zip:
Telephone: 412.809.0600   Telephone:
Fax: 412.809.0777   Fax:

Attachment 1 - Scope of Services

The services, functions, processes and activities described below will be collectively described as the "Services" for purposes of this Agreement. All Services will be provided by the Provider to the Customer.

1.   *Application*
Application refers to the Software known as AssetMAXX. The Application for purposes of this Agreement also include the operating system, utilities, scheduled batch cycles, database software and all necessary licenses required to successfully and adequately operate the Software in accordance with this Agreement.

2.   *Hardware*
The Application will be hosted on Provider supplied servers in the Data Center. If required and requested by Customer, Customer shall provide the telecommunications equipment (including the routers to be installed at the Data Center and Disaster Recovery Center site), communication line and services for connection from Customer's site to the Data Center and Disaster Recovery Center.

3.   *Database Instances*
A single Production Database instance will be maintained for Customer.   This Production Database will provide the daily, real-time transaction data to the registered Users.

4.   *Hours of System Operations*
The Application will be accessible and available to the Customer and capable of any and all normal operating functions 24 hours a day, seven days a week except for previously approved and Scheduled Maintenance. The Provider will not be held responsible for inaccessibility arising from communications problems occurring anywhere beyond the Provider's side of the router resident at the Provider's Data Center, nor will these hours of unavailability be counted as unavailable for purposes of the Service Level.

5.   *Availability*
If the Application is available less than 95% of all "Available Hours" in the calendar quarter, Customer may at its option terminate this Agreement and Provider will waive the Service Termination Fee identified in Section 5 of Attachment 2. Scheduled Maintenance hours will not count as unavailable hours. "Available Hours" means the product of the number of days in the quarter times 1440 minutes, less Scheduled Maintenance. Should the Customer identify an instance of non-compliance related to availability, the Customer will deliver written notification to the Provider. Upon notification by the Customer of Contractual Non-Compliance, the Provider will research the problem and respond to the Customer by the next business day.

6.   *Help Desk Operations*
Provider will maintain a Help Desk to receive Customer calls to report, log and resolve any problems with the Services identified by the Customer.

Customer will be allowed unlimited calls to the Help Desk as long as Customer remains in compliance with all contractual commitments between Customer and Provider.

While the Application will be available to the Customer on Holidays, the Help Desk will operate on an "after Business Hours" schedule on Holidays. Provider currently recognizes the following Holidays:

New Years Day	Memorial Day	Columbus Day	Boxing Day
Martin Luther King Day	Fourth of July	Thanksgiving Day	
Presidents Day	Labor Day	Christmas Day	

Additional Holidays may be added upon prior written notice to Customer.

6.1 **Help Desk Inquiry Settlement** - Customer inquiries to the help desk will be settled in a timely manner. Help desk personnel will attempt to resolve the inquiries themselves. In more complicated cases, the inquiry may be settled by escalating a task to the engineering team or a Data Center specialist. Provider will track the average time that is needed to resolve a help desk incident.

6.2 **Scheduled Communication** - Regularly scheduled Provider communications with the Customer will be performed in a timely manner. The list of regular communications will be mutually determined. These may include, but are not limited to, newsletters and issue updates.

6.3 **Communication On Request** – Ad-hoc requests for information by the Customer will be handled in a timely manner based on the timing commitment made by Provider in each case. The delivery times for ad-hoc communications will be estimated by Provider as they are requested, based on their criticality and the length of preparation time required.

6.4 **Data Center Announcements** – Provider will notify the designated Customer representative by email of anticipated changes in the system availability with as much advance notice as possible.

6.5 **Feedback** – Provider will conduct periodic surveys of key customer contracts to assess general Customer perceptions of the level of service being provided. Surveys will be formatted to support Service Level Objectives.

Notwithstanding the foregoing, the Provider shall not be responsible for the maintenance, accuracy or completeness of the Customer data except as set forth herein.

7. *Backup Retention*
Backups will be made daily in three (3) month increments. After 90 days, a new cycle will begin and the existing backups will be overwritten.

8. *Maintenance*
The Provider will complete Scheduled Maintenance of the Application on a weekly basis. This Scheduled Maintenance will consist of downtime of the Application mutually agreed upon by the Customer and the Provider. Scheduled Maintenance will include database reorganization and any other weekly requirements that allow the Application to successfully and adequately operate.

If the Provider is required to perform additional maintenance outside of the Scheduled Maintenance window, it will notify the Customer in writing of its request. The Customer and the Provider will mutually agree on the downtime, which will then be considered Approved Maintenance.

9. *Data Recovery*
In the event of a loss of data because of a failure of Provider or Data Center, the databases will be successfully restored as quickly as possible.

10. *Obligations Upon Termination of Contract*

10.1 **Customer's Obligations Upon Termination or Expiration** Upon termination or expiration for any reason, all rights granted hereunder to the Customer shall forthwith terminate, and:
(a) Customer shall immediately and permanently cease to use the Application and Services in any manner whatsoever except as reasonable required to obtain its data,

(b)   Customer shall make all payments due. If Customer fails to give notice of termination before the start of any renewal period, Customer owes Provider for the entire renewal period.

10.2   **Provider's Obligations Upon Termination or Expiration**   Upon termination or expiration for any reason, all rights granted by Customer hereunder to the Provider shall forthwith terminate, and:

(a)   Provider shall immediately and permanently cease to use, in any manner whatsoever, all of the Customer's Proprietary Marks and distinctive forms, slogans, signs, symbols, and devices associated with the Customer including, without limitation, all signs, advertising materials, displays, stationary, forms and any other articles which display such proprietary marks,

(b)   Provider will allow Customer reasonable access to the Customer's Production Database, and any and all other databases, scripts, utilities or files maintained by Provider on behalf of Customer for Customer to obtain its data,

(c)   Provider will use commercially reasonable efforts to assist Customer in affecting a smooth transition of the Application and Services to Customer or any other vendor chosen by Customer, and

(d)   Provider, when directed by Customer to do so, will delete all of Customer's data in Provider's possession from any data storage media under control of the Provider. Unless otherwise agreed in writing, Provider shall have no obligation to retain the data for more than thirty (30) days after termination of the Agreement.

Attachment 2 – Fee Schedule

1. **Start-up Fee**
   Provider shall charge Customer for any related startup requirements to account for any data conversion and hardware configuration time that might be required in establishing the Customer database. Any startup fees will be disclosed to the Customer in writing and will require written Customer authorization prior to executing this agreement. Startup fees are a one-time fee and are not applicable on an annual basis.

2. **Annual Service Fees**
   Access to Software will be made available to registered users at the following rates:

   > Number of users desired: 1 @ $_____ per user/per year   = $_____ per year

   If additional users are desired, they can be added to the Agreement by contacting the Provider. The rates listed above will apply. Customer database will be monitored to ensure access is granted only to registered users.

3. **Special Service Fees**
   Fees for diagnostic/corrective action time when a problem is determined to be Customer-caused, and other fee-based service activities is as follows:

   - Onsite Support - $150 per hour plus expenses; two-day minimum charge to account for required travel time
   - Remote Support - $150 per hour
   - Onsite Training - $1,295 per day plus expenses

4. **Fee Adjustments**
   The fees set forth herein shall remain in effect during the initial one (1) year term of the Agreement. Thereafter, Provider shall have the right to adjust its fees no more than once a year upon 30 days prior written notice to Customer.

5. **Early Termination**
   In the event that Customer elects to terminate Provider services other than at the expiration of a twelve-month period, no refund will be paid to Customer. Customer's data and active user logins will be available to Customer through the end of the applicable twelve-month period. If Customer does not terminate before the start of a renewal period, Customer will be obligated to pay Provider for the entire renewal period. If Customer does not timely pay a renewal invoice, Provider may suspend services and/or pursue payment and exercise what other rights and remedies available under this Agreement.

6. **Provider Fees For Data Export**
   In the event that Customer elects to terminate this Agreement and requests Provider assistance exporting the data, Provider will estimate the required effort and provide Customer with a quote for such requested assistance. The Software does have export capabilities which can be performed by Customer without assistance; accordingly, Customer is not required to request Provider assistance.

7. **Travel, Meals and Lodging**
   In addition to the fees set forth above, Customer shall reimburse Provider for airfares, meals, ground transportation and other reasonable living expenses incurred by Provider in support of the Agreement during provision of support services at the Customer site.