

## Hosting Services Agreement

This Application Hosting Services Agreement (“Agreement”) is effective as of August 1, 2018 (“Effective Date”), by and between AssetWorks LLC (“AssetWorks”), a Delaware limited liability company with offices located at 998 Old Eagle School Road, Wayne, Pennsylvania, 19087 and the City of West Allis, WI (“Customer”), with offices located at 7525 W. Greenfield Ave., West Allis, WI 54321. Intending to be legally bound, the parties hereby mutually agree to the following terms and conditions:

### 1. AGREEMENT OVERVIEW

AssetWorks operates a Data Center (“Data Center”), located at 998 Old Eagle School Rd., Wayne, PA 19087, and provides associated services to support customers that wish to outsource the operation and maintenance of computer applications listed in the Scope of Services as referenced in Attachment 2.

This Agreement describes the services to be provided by AssetWorks (“Hosting Services”) the respective responsibilities of the parties, the service level objectives (“SLOs”), and the problem management process. This Agreement incorporates the following Attachments that shall be considered an integral part of this Agreement:

- Attachment 1 Service Level Agreement
- Attachment 2 Scope of Services
- Attachment 3 Fee Schedule

### 2. SERVICES

AssetWorks will perform the services (“Services”) as described in the Scope of Services, set forth in Attachment 2.

The general scope of services addressed by this Agreement includes the operation, maintenance, and support of the:

- Database software for the Applications hosted under this Agreement
- Database security
- Data Center server operation

The scope of services specifically excludes operation and maintenance of the following:

- Customer hardware, including Customer’s servers, printers, network hardware (including routers and switches) and other Customer site computing equipment;
- Customer application software other than noted in the Scope of Services; and
- Customer Local Area Networks (“LAN”)
- Customer network infrastructure for connecting to the Internet and to the AssetWorks Data Center

The Services shall be provided subject to the Terms and Conditions, which follow.

### 3. TERM

The Term of the Agreement shall commence as of the Effective Date and shall continue for five (5) years (“Initial Term”) unless terminated earlier as set forth below. At least ninety (90) days prior to the end of the Initial Term, AssetWorks shall provide Customer with a quote for renewal of Services. The Customer will have the option to renew the Agreement for additional consecutive one-year terms and shall provide written notice of intent to renew at least sixty (60) days prior to the end of the then current term.

#### **4. FEES AND PAYMENT**

Customer shall pay AssetWorks the applicable fees as set forth in the Fee Schedule, Attachment 3.

AssetWorks shall invoice Customer annually, in advance, and all invoiced fees shall be due and payable within 30 days of the date of an invoice. Monthly invoices shall be issued for Professional Services and include charges defined in Attachment 3. All payments shall be made in United States Dollars without deduction for any taxes or withholding or other offset.

The preferred means of payment is by electronic funds transfer (EFT). EFT payments can be accomplished as either a Funds Transfer (Fed Wire) or Direct Deposit (ACH).

Remit By EFT / ACH / DD / Wire:

Wells Fargo

ABA Routing No. 122105278

Account No. 5076434348

Swift Address WFBIUS6S

Remit By Check:

AssetWorks

PO Box 202525

Dallas TX 75320-2525

Except in the case of a bona fide dispute thereto, any amounts not paid when due will be subject to interest accrued at twelve percent (12%) per annum compounded quarterly, which interest will be immediately due and payable from the due date for payment until the date of actual receipt of the amount in cleared funds by AssetWorks

The terms set forth below shall not apply in situations involving a bona fide dispute. The Customer will be considered delinquent if payment in full is not received forty-five (45) days from the date of the invoice. AssetWorks reserves the right to suspend or terminate this Agreement and Customer access to the Service if the Customer account becomes delinquent 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 AssetWorks to exercise any and all rights and remedies provided herein or at law including a suspension of Services under the Agreement. If Customer or AssetWorks initiate termination under any provision of the Agreement, except Customer's initiation under Section 8, "Termination for Default", Customer will be obligated to pay the balance due on their account computed in accordance with the Fee Schedule in Attachment 3. Customer agrees that they may be billed for such unpaid fees.

Upon termination for whatever reason and regardless of the nature of the default (if any), Customer agrees to pay AssetWorks in full for Services provided to Customer to date under this Agreement within 30 days of the invoice date.

#### **5. CUSTOMER RESPONSIBILITIES**

The Customer is responsible for:

- Assigning a primary and alternate Customer representative to coordinate all communications and activities related to AssetWorks services.
- Providing user identification data and determining the appropriate security profile for each user. Customer will control security at the Application level.

- All printing. No print job will print at the Data Center and all physical printing requirements will be handled by the Customer.
- The purchase and installation of printers at Customer's sites for the Application being utilized as defined in the Scope of Services.
- Installation, operation and maintenance of all workstation software (and Customer's LAN, existing data communications configuration, hardware, or software required at the Customer's site except as otherwise stipulated in the Scope of Services. AssetWorks network and network responsibility extends from the AssetWorks routers at AssetWorks' sites to all connected equipment at AssetWorks' sites.
- Testing updates and fixes applied by AssetWorks to Applications used by Customer. With the exception of emergency fixes, Customer will test updates and fixes prior to their introduction to the Production environment within a mutually agreed upon time frame.
- Testing upgrades. Upgrades will be moved to production by the AssetWorks at the end of the Customer testing period unless specific problems are documented in writing to AssetWorks.
- Diligent analysis of suspected problems to determine their specific nature and possible causes before calling the AssetWorks for assistance. Notwithstanding this diligence requirement, Customer is responsible for informing AssetWorks of any problems encountered in a 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 AssetWorks in providing Services under the Agreement. AssetWorks shall not obtain any ownership rights, title or interest to Customer's data files. Upon expiration or termination of the Agreement for any reason, AssetWorks agrees to provide Customer with a copy of Customer's data files, as they exist at the date of expiration or termination pursuant to the requirements outlined in the Obligations. Upon Termination of Contract section of this Agreement.

## **7. WARRANTY DISCLAIMER/LIMITATION OF LIABILITY**

Except as expressly set forth herein, AssetWorks disclaims all warranties relating to the services or deliverables provided hereunder, including but not limited to any warranty of fitness for a particular purpose or merchantability. AssetWorks shall not be liable for any punitive, indirect, incidental, special or consequential damages, including but not limited to lost revenues or profits, however arising, even if AssetWorks has been advised of the possibility of such damages. AssetWorks' liability for any and all damages (including attorneys' fees) under this Agreement (whether in contract or tort) shall in no event exceed fees paid to AssetWorks during the previous 12-month period. The parties acknowledge and agree to the foregoing liability risk allocation.

## **8. TERMINATION FOR DEFAULT**

A Default shall occur if: (1) a party fails to perform any of its material obligations under the Agreement and such failure remains uncured for 30 days after receipt of written notice thereof; or (2) 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.

If Default occurs, the non-defaulting party, in addition to any other rights available to it under law or equity, may withhold its performance or payments hereunder or may terminate the Agreement by written notice to the defaulting party. Unless otherwise provided in the Agreement, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy.

## **9. GOVERNING LAW; VENUE**

The Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin. Any legal action, suit or proceeding brought by either party in any way arising out of this Agreement must be brought solely and exclusively in, and will be subject to the service of process and other applicable procedural rules of, the state or federal courts in Milwaukee,

Wisconsin. Both parties consent to the jurisdiction of such courts and waive any objections regarding venue in such courts.

#### **10. ASSIGNMENT**

Neither the Agreement nor any duties or obligations hereunder shall be assigned or transferred by Customer without the prior written approval of AssetWorks, which approval may be withheld in the reasonable judgment of the AssetWorks. Customer agrees that AssetWorks may assign its obligations to a third party subject to Customer's written approval of such change, but AssetWorks shall remain responsible for performance under the Agreement. All fees will remain intact as outlined in Attachment 3.

#### **11. 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.

#### **12. ENTIRE AGREEMENT**

The Agreement and any schedules and exhibits 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, understandings, commitments, representations of any kind, whether oral or written, relating to the subject matter hereof or the Services to be provided hereunder.

#### **13. 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 Providers, 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.

#### **14. WAIVER**

No provision of the Agreement may be waived unless in writing, signed by both of the parties hereto. 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.

#### **15. AMENDMENTS, SUPPLEMENTS**

The Agreement may be amended or supplemented only by the mutual written consent of the parties' authorized representative(s).

#### **16. BINDING EFFECT, BENEFITS**

The Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Notwithstanding anything contained in the Agreement to the contrary, nothing in the Agreement, expressed or implied, is intended to confer on any person

other than the parties hereto or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of the Agreement.

## **17. NOTICES**

All notices under the Agreement will be in writing and will be delivered by personal service, certified mail, postage prepaid, or overnight courier to such address as may be designated from time to time by the relevant party, which initially shall be the addresses set forth on the signature page to the Agreement. Any notice sent by certified mail will be deemed to have been given five (5) days after the date on which it is mailed.

## **18. HEADINGS**

The Section headings in the Agreement are inserted only as a matter of convenience, and in no way define, limit, or extend or interpret the scope of the Agreement or of any particular Article or Section.

## **19. 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.

## **20. DISPUTE RESOLUTION**

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 either party may move the Dispute for mediation. The parties shall use good faith efforts to resolve the Dispute. If the Dispute is not resolved at mediation, the parties may avail themselves of the court system.

## **21. RELATIONSHIP OF PARTIES**

The relationship of the parties shall at all times be one of independent contractors. Nothing contained herein shall be construed as creating any agency, partnership or other form of joint enterprise between the parties.

## **22. CONFLICTING PROVISIONS**

This Agreement and all of the exhibits, schedules, and documents attached hereto are intended to be read and construed in harmony with each other, but in the event any provision in any attachment conflicts with any provision of this Agreement, then this Agreement shall be deemed to control, and such conflicting provision to the extent it conflicts shall be deemed removed and replaced with the governing provision herein.

## **23. COUNTERPARTS**

The Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

## **24. 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.

**25. SIGNATURES**

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

CUSTOMER

AssetWorks LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

# Attachment 1 - Service Level Agreement

This Service Level Agreement (“SLA”) is intended to provide an understanding of the level of service to be delivered by the AssetWorks for the Services specified in Attachment 2. The service levels set forth below apply to the Services provided by AssetWorks under the Agreement.

## **AVAILABILITY**

AssetWorks will use commercially reasonable efforts to provide Services with an average of 95% Availability (as such term is hereinafter defined) for each quarter during the Term. For purposes of the Agreement, “Availability” during any quarter refers to an Authorized User’s ability to log into the Application during such quarter, and will be calculated in accordance with the following formula:

$$x = (y - z) / y * 100$$

Where,

- “x” is the Availability of the Application during the quarter;
- “y” is the total number of hours in such quarter minus the number of hours during such quarter that the Customer is unable to log into the Application because of (a) regularly scheduled maintenance windows for the Application and for times in which Customer has been notified in writing (including e-mail) by AssetWorks in advance thereof; (b) a Force Majeure Event; (c) non-performance of hardware, software, ISP connections, and other equipment that is not provided by AssetWorks or certified by AssetWorks for use in conjunction with the Services (except as such non-performance is directly or indirectly caused by AssetWorks).
- “z” is the number of hours in such month during which the Customer is unable to log into the Application (other than for reasons set forth in the definition of “y” above); provided that AssetWorks has been notified or is otherwise aware (or reasonably should be aware) of Customer’s inability to utilize the Application.

## **FEE ADJUSTMENT**

In the event that AssetWorks does not meet the Availability levels set forth below, the amount of fees payable by Customer will be reduced as follows:

In the event the average Availability for the Application is less than ninety five percent (95%) during any two consecutive quarters, Customer will receive a credit to its account with AssetWorks of five percent (5%) of the amount of a quarter’s aggregate AssetWorks Hosting Services fees paid or payable by Customer to AssetWorks.

AssetWorks’ obligation to provide Customer with fee adjustments as set forth above is conditioned on Customer providing detailed written notice to AssetWorks of its contention that AssetWorks was unable to meet the applicable Availability levels. Upon receipt of such notice, AssetWorks shall have thirty (30) calendar days to investigate the contention. If, at the end of the thirty (30) calendar day period it is determined that AssetWorks did in fact fail to meet the applicable Availability levels, Customer will receive the appropriate credit to its account during the next invoice cycle.

The remedies set forth in this Section of this Attachment shall be Customer’s sole remedy and AssetWorks’ entire liability in the event of a breach of this Agreement, including the failure of any Availability measurements to meet the thresholds set forth above. Notwithstanding the foregoing, if AssetWorks consistently fails to meet Availability levels and does not present the Customer with a sufficient remediation plan and/or provide the necessary remediation, said failure shall constitute a Default pursuant to Section 8, “Termination for Default”, of the Agreement and Customer may terminate this Agreement for Default thereunder.

## Attachment 2 - Scope of Services

All of 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 AssetWorks to and for the Customer's benefit in a manner that will meet the objectives outlined in Attachment 1.

### **Application**

Application refers to the Customer's licensed AssetWorks software, and 3<sup>rd</sup> Party Software hosted by AssetWorks.

### **Support Software**

Support Software includes the operating system, utilities, database software, and all necessary licenses required to operate the Application.

### **Hardware**

Server infrastructure using redundant web servers and Oracle RAC database servers is deployed within the primary Data Center located in Wayne, PA, to maximize uptime.

If required by Customer, Customer shall provide the telecommunications equipment (including the routers to be installed at the Data Center), communication line, and services for connection from Customer's site to the Data Center.

### **Database Instances**

AssetWorks will maintain a single Production Database instance. This Production Database will provide the daily, real-time transaction data to the Application users.

In addition to the Production Database, AssetWorks will maintain one additional, non-production Database (Test). Upon request by Customer, AssetWorks will populate these additional Databases with Customer's Production data up to 4 times in any 12 month period at no additional cost.

For an additional charge as defined in Attachment 3, AssetWorks will furnish an Ad-hoc Reporting Database for use with the Customer developed ad-hoc reports. This Database will be updated from the production database every night and will allow the Customer direct access to its data for purposes of ad-hoc reporting.

### **Custom Reports**

For an additional charge as defined in Attachment 3, AssetWorks will certify a Customer built Ad-hoc Report for scheduling execution from within the Application directly against the production database, certifying that the Report performs within appropriate performance guidelines and does not cause unacceptable response time issues. Once certified, AssetWorks will install the Report into Customer's production environment to make it available for execution submission from within the Application.

### **Backups**

Backups are taken on a nightly and monthly basis. Monthly backup tapes are rotated to the offsite storage facility and maintained for 12 months before recycling. Database backups are taken each night using Oracle RMAN and a time determined by AssetWorks. File system backups are taken using Tivoli Storage Manager and are taken following the Oracle RMAN backup as part of a scheduled process.

For an additional fee, AssetWorks will schedule other 'Critical Points' for back-up, as defined and required by the Customer (e.g., month-end, year-end and before upgrades.). The Customer retains the right to have copies of back-up tapes mailed to the Customer's site on a schedule determined by AssetWorks.



**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 periods of Scheduled Maintenance and previously approved outages. AssetWorks will not be held responsible for inaccessibility arising from communications problems occurring anywhere beyond the AssetWorks side of the router resident at the Data Center, nor will these hours of unavailability be counted as unavailable.

**Maintenance**

AssetWorks will complete routine maintenance on the Application according to the published schedule. AssetWorks will publish schedules for subsequent years on its Customer Support web site. AssetWorks will provide at least 30 days notice to any changes in the schedule.

If AssetWorks 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 AssetWorks will mutually agree on the downtime, which will then be considered a period of Scheduled Maintenance.

# Attachment 3 – Fee Schedule

This section provides the fees payable to AssetWorks.

## **Start-Up Fee, Hosting**

The Hosting Set-Up fees are as follows for a 60-Month contract:

AssetWorks EAM Online Application Setup and Configuration

One time Server set up fee                   \$5,000

One time Report Server set up fee   \$2,500

## **Service Fees Structure**

AssetWorks will invoice Customer in advance on an annual basis. The annual service fees will begin on the Effective Date of this Agreement.

The annual fee will be \$27,000 per year fixed for the five year of the term.

## **Fee Adjustments**

**For additional Customer database instances requested beyond the existing Production and Test instances, a one-time fee will be charged for creation and a per month fee will be charged as long as the instance exists at the Data Center.**

## **Additional Database Creation Fee**

## **Monthly Service Fee for Additional Database**

## **Monthly Service Fee for Ad-hoc Reporting Database**

## **Professional Services Fees**

Work requested by Customer beyond that described in Attachment 2, will be charged at the following rates. Before any work is done which would incur charges billed as Professional Services Fees, the AssetWorks will supply a proposal describing the work and providing an estimate of hours, cost, and completion date. Customer approval will be required before work can begin.

Project Management, hourly fees will be quoted at the time of service

Training and Subject Matter Expert Consulting, hourly fees will be quoted at the time of service

Development, hourly fees will be quoted at the time of service.

## **Service Termination Fee**

If Customer terminates this Agreement other than pursuant to Section 8, "Termination for Default," of the Agreement, a Service Termination Fee equal to 100% of the current Monthly Service Fees will be billed monthly until the end of that current annual billing cycle.

## **Travel Expenses**

In addition to the fees set forth above, Customer shall reimburse AssetWorks for air fare, meals, ground transportation, and other reasonable travel and living expenses incurred by AssetWorks in support of the Agreement during provision of support services at the Customer site. AssetWorks will adhere to the Customer's Travel Policies to the extent possible.