

Board of Education
Dixon Unified School District

Subject: Assetworks service provider agreement for Asset management

Meeting Date: October 25, 2012

Item #: **VII - D**

Agenda Item Submitted For:

- Consent
- Public Hearing
- Action, Information, Discussion
- Action
 - Resolution
- Information
- Discussion

SUBMITTED BY: Cecile L. Nunley

PRESENTED BY: Cecile L. Nunley

Management Recommendation:

Staff recommends approval of contract with ASSETWORKS as the provider of services regarding database security and database hosting for the fixed assets of the District.

Discussion:

The district has been receiving services from ASSETWORKS for over 3 years for database management and hosting for the fixed assets of the district.

Financial Impact:

Financial impact is \$5,400.00 per year.

District Goal this item addresses:

- Increasing Student Learning
- Improving the Learning Environment
- Increasing Parental Involvement
- Managing our Resources Effectively
- Building Confidence in District Leadership

Application Service Provider Agreement

between

AssetWorks, Inc.

and

Dixon Unified School District

AssetWORKS

Application Service Provider Agreement

This Application Service Provider Agreement (“Agreement”) is effective as of May 1, 2012 (“Effective Date”), by and between AssetWorks, Inc. (“Provider”), with offices located at 4955 Steubenville Pike, Suite 401, Pittsburgh, PA 15205 and Dixon Unified School District (“Customer”), with offices located at 180 South First Street, Suite 11, Dixon, CA, 95620, on the following terms and conditions:

1. AGREEMENT OVERVIEW

Provider operates an Application Service Provider (“ASP”) Data Center (the “Data Center”), located at at 998 Old Eagle School Road, Suite 1215, Wayne, PA 19087, and provides associated services to support customers that wish to outsource the operation and maintenance of computer applications.

This Agreement describes the services to be provided by Provider, the respective responsibilities of the parties, the service level objectives (“SLO’s”), and the problem management process. 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 Service Level Agreement
- Attachment 3 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 ASSETMAXX Application hosted under this agreement,
- Application Database security.

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 Customer site computing equipment;
- Customer application software other than noted in the Scope of Services; and
- Customer Local Area Networks (“LAN”).

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 one year (“Initial Term”) unless terminated earlier as set forth below.

4. FEES AND PAYMENT

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

4.2. Provider shall invoice Customer upon installation of Customer data and annually on the anniversary of the Effective Date. 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.

Thereafter, 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. 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, 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 Provider. Interest payments that are accrued during billing disputes should be credited back to the Customer if said dispute is found to be through no fault of the Customer.

- 4.3. A Customer will be considered delinquent if payment in full is not received thirty (30) days from the date of the invoice. Provider 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 Provider to exercise any and all rights and remedies provided herein or at law including a suspension of Services under the Agreement
- 4.4. Upon termination for whatever reason and regardless of the nature of the default (if any), Customer agrees to pay Provider in full for Services provided to Customer under this Agreement within 30 days of the invoice date.

5. **CUSTOMER RESPONSIBILITIES**

Provider responsibilities are detailed in the Service Level Agreement, Attachment 2. 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, Provider 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 the Attachment 1.

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. ANY CLAIM BY CUSTOMER AGAINST PROVIDER RELATING TO THIS AGREEMENT MUST BE MADE IN WRITING AND PRESENTED TO PROVIDER WITHIN SIX (6) MONTHS AFTER THE DATE ON WHICH THIS AGREEMENT EXPIRES OR IS OTHERWISE TERMINATED.

8. **INSURANCE/INDEMNITY/WARRANTY**

Vendor warrants the quality, sufficiency, conformity to contract specifications, and fitness for use and purpose of all delivered goods for a period of twelve (12) months after the date of delivery and/or installation. (Only applicable if goods are purchased). Vendor warrants the quality and conformity to contract specifications of all services for a period of twelve (12) months after the date of the completion of the provided service. (Only applicable if services are purchased). Vendor shall promptly make District whole for any loss or damage (except remote loss or damage) caused by a breach of these warranties.

Vendor will defend and indemnify the District and its directors, officers and employees in response to a claim arising from harm to a third party actually or allegedly caused by Vendor or its employees, agents, or contractors, or Vendor's goods or services provided pursuant to this Contract, except to the extent the claim includes allegations of sole or separate liability by the District, its directors, officers, or employees. Vendor must provide copies of current certificates of insurance evidencing general liability (CGL) and business automobile liability insurance coverage, and worker's compensation insurance if the Vendor is providing services, with a limit of liability of no less than the District's required minimum limit of \$500,000 per occurrence.

9. **TERMINATION FOR DEFAULT**

9.1 Without Cause By District. District may, at any time, with or without reason, terminate this Agreement and compensate Consultant only for services satisfactorily rendered to the date of termination. Written notice by District shall be sufficient to stop further performance of services by Consultant. Notice shall be deemed given when received by the Consultant or no later than three days after the day of mailing, whichever is sooner.

9.2 Without Cause by Consultant. Consultant may, upon thirty (30) days notice, with or without reason, terminate this Agreement. Upon this termination, District shall only be obligated to compensate Consultant for services satisfactorily rendered to the date of termination. Written notice by Consultant shall be sufficient to stop further performance of services to District. Consultant acknowledges that this sixty (60) day notice period is acceptable so that the District can attempt to procure the Services from another source.

9.3 With Cause by District. District may terminate this Agreement upon giving of written notice of intention to terminate for cause. Cause shall include:

- 9.3.1** material violation of this Agreement by the Consultant; or
- 9.3.2** any act by Consultant exposing the District to liability to others for personal injury or property damage; or
- 9.3.3** Consultant is adjudged a bankrupt, Consultant makes a general assignment for the benefit of creditors or a receiver is appointed on account of Consultant's insolvency.

Written notice by District shall contain the reasons for such intention to terminate and unless within three (3) calendar days after that notice the condition or violation shall cease, or satisfactory arrangements for the correction thereof be made, this Agreement shall upon the expiration of the three (3) calendar days cease and terminate. In the event of this termination, the District may secure the required services from another Consultant. If the expense, fees, and/or costs to the District exceed the cost of providing the service pursuant to this Agreement, the Consultant shall immediately pay the excess expense, fees, and/or costs to the District upon the receipt of the District's notice of these expense, fees, and/or costs. The foregoing provisions are in addition to and not a limitation of any other rights or remedies available to District.

10. 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, which initially shall be the address set forth below:

Name: Cecile Nunley
Client: Dixon Unified School District
Address: 180 South First Street, Suite 11
City State Zip: Dixon, CA 95620
Tel. No. (707) 693-6300 ext 8040
Fax No. (707) 678-0726

11. 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.

12. 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.

13. 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.

14. ASSIGNMENT

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

15. **GOVERNING LAW; VENUE**

The Agreement shall be governed and construed in accordance with the laws of the State of California without regard to choice of law principles. Subject to Section 21 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 Solano, California. Both parties consent to the jurisdiction of such courts and waive any objections regarding venue in such courts.

16. **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.

17. **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. Any request for arbitration of a claim by either party against the other relating to this Agreement must be filed no later than six (6) months after the date on which Provider concludes performance under this Agreement.

18. **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. This Agreement shall not be effective until the execution and delivery between each of the parties of at least one set of the counterparts.

19. **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.

20. **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.

21. **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.

22. **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.

23. **ENTIRE AGREEMENT; CONFLICTING PROVISIONS**

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, 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. In the event that 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.

24. **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

25. **SURVIVAL**

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

26. **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.

Signatures

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

“Provider”
AssetWorks, INC.

“Customer”
Dixon Unified School District



Signature

Signature

Date: March 1, 2012

Date: _____

Michael B. Borello
Vice President – Appraisal Division
4955 Steubenville Pike, Suite 401
Pittsburgh, PA 15205
Telephone: 412.809.0600
Fax: 412.809.0777

Contact: Cecil Nunley
Title: CBO
Address: 180 South First Street, Suite 11
City, State, Zip: Dixon CA 95620
Telephone: (707) 678-5582
Fax: (707) 678-0726

Attachment 1 - Scope of Services

All 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 and for the Customer's benefit in a manner, which will adequately meet or exceed the SLA, Attachment 2. Provider's failure to deliver the services and meet SLO's defined in the SLA will constitute Default by the Provider. Neither the SLA nor these Services can be changed in any way without written Amendment.

1. **Application**

Application or Applications refers to the AssetMAXX software. Applications 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 a manner to meet the SLA, Attachment 2.

2. **Hardware**

The Application will be hosted on AssetWorks, Inc. supplied servers.

The Server will always provide adequate facility to meet the SLOs. If required 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 Application 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 Contractual Non-Compliance.

5. **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.

- 5.1 **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.
- 5.2 **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.
- 5.3 **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.
- 5.4 **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.
- 5.5 **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.

6. ***Data 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.

7. ***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 in a manner to meet the SLA, Attachment 2.

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.

8. ***Disaster Recovery***

In the event of a disaster the databases will be successfully restored as quickly as possible. Disaster Recovery plans include failover within one business day to an alternative Data Center. Provider will conduct periodic data recovery tests to confirm that the recovery objectives can be met.

9. ***Obligations Upon Termination of Contract***

- 9.1 **Customer's Obligations Upon Termination or Expiration** Upon termination due to a Default by the Customer or expiration of this Agreement, all rights granted hereunder to the Customer shall forthwith terminate, and:
 - (a) Customer shall immediately and permanently cease to use the ASP Services in any manner whatsoever,
 - (b) Customer shall pay to the Provider all damages, costs and expenses, including reasonable attorneys' fees, incurred by the Provider as a result of the termination or expiration of this Agreement due to Default by the Customer, including costs in obtaining injunctive or other relief for the enforcement of any provision of this Agreement, and

- (c) Customer shall make all payments due.

9.2 **Provider's Obligations Upon Termination or Expiration** Upon termination due to a Default by the Provider or expiration of this Agreement, all rights granted 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 copy the Customer's Production Database, and any and all other databases, scripts, utilities or files maintained by Provider on behalf of Customer, and forward the copies to the Customer on machine-readable media in a format acceptable to the Customer,
- (c) Provider will use all reasonable efforts to assist Customer in affecting a smooth transition of the ASP 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.

Attachment 2 - Service Level Agreement

This Service Level Agreement ("SLA") is intended to provide an understanding of the level of service to be delivered by the Provider for the Services specified in Attachment 1.

The Service Level Objectives ("SLO") will be reviewed annually by the Provider and Customer to determine if new business conditions or new technology support a modification of the Agreement. The Provider and Customer will mutually agree upon any recommended modifications. Failure to reach mutual agreement will prompt Dispute Resolution as outlined in Section 16 of the Agreement.

Service Level Non-Compliance

Non-Compliance is the inability to achieve any SLO. There are two kinds of Non-Compliance: Operational Non-Compliance and Contractual Non-Compliance. Operational Non-Compliance is the instance or onset of the inability of the Provider to meet an SLO (e.g., unavailability of the Application). Contractual Non-Compliance is the failure of the Provider to adhere to the services described in this Agreement. The response outlined below is required for both Operational Non-Compliance and Contractual Non-Compliance. Instances of Operational Non-Compliance can, with multiple occurrences, extended time, or severity, become issues of Contractual Non-Compliance.

Should the Customer identify an instance of Operational Non-Compliance, the Customer will notify the Help Desk.

Should the Customer identify an instance of Contractual Non-Compliance, 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. This response will outline:

- What actions will be taken to resolve this specific instance of the problem;
- How long it will take to implement these actions; and
- What process will be undertaken to ensure that the SLO will be successfully met in the future.

Possible actions to ensure that Provider will meet the SLO in the future include:

- The establishment of additional policies or business process enhancements to increase the likelihood of meeting the existing SLOs;
- The employment of additional hardware, software, personnel or additional resources to increase the likelihood of meeting the existing SLOs; and
- A review of the existing SLOs to determine if they are no longer appropriate given changes in Customer usage, other conflicting demands, or new technology. Based on mutual agreement between the Customer and Provider, more realistic goals may be established based on information gathered since the goals were last set. This will only be done if it is in the best overall interests of the Customer.

Non-Compliance

Provider will achieve the SLOs on a quarterly calendar basis. The following chart and text describe several categories of SLOs. Contractual Non-Compliance is defined differently for Category 1 (Application Availability and Performance) than it is for all other SLO's.

- 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 3. 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.
- Failure to meet one or more of the SLOs other than Category 1 (Application Availability and Performance) for any given month does not constitute a Default of the Agreement. If Provider fails to meet one or more of the other SLOs for two consecutive calendar quarters, Customer may at its option terminate this Agreement and the Service Termination Fee identified in Section 5 of Attachment 3 will be waived by Provider.

Service Level Categories and Objectives

No.	Category	Subcategory	Objective
1	Application Availability and Performance	Normal Operating Conditions	<ul style="list-style-type: none"> Regular hours Provider network
		Data Recovery	<ul style="list-style-type: none"> Backup Frequency Data Retention Data Recovery
		Response Time	<ul style="list-style-type: none"> On-line Screens Queries Batch Cycles
2	Security	Front door Access to Data	<ul style="list-style-type: none"> Access Authorization
		Backdoor Access	<ul style="list-style-type: none"> Customer Network Physical Access to Data Center

Service Level Category 1: Application Availability and Performance

Subcategory: Normal Operating Conditions

Regular Hours

Objective

The Application will be available as defined in section 5 of Attachment 1.

Verification Method

The Application availability will be monitored by Data Center staff and verified by the Customer using alternate sources available.

Provider Network

Objective

The Data Center will be responsible for the dependability, accessibility, and security of the Provider's internal communication network .

Verification Method

The Provider network availability will be monitored by Data Center staff and verified by the Customer.

Subcategory: Disaster Recovery

Back-up Frequency

Objective

All Customer data and all other configuration files, scripts, and any other files necessary for complete and successful operation of the Application will be copied to and backed-up to tape at a pre-defined schedule developed by Provider. For an additional fee, Provider will schedule other 'Critical Points' for back-up, as defined and required by the Customer (e.g., month-end, year-end and before upgrades.)

Back-ups of the Customer's Production and Test data will be performed in accordance with Provider's standard back up schedule and tapes sent to off-site storage via an authorized escrow agent within 24 hours of the back-up being taken. The Customer retains the right to have copies of back-up tapes mailed to the Customer's site on schedule determined by Provider.

Verification Method

The Data Center will verify daily that each back-up's status is listed as complete by the system.

Data Retention

Objective

Data will be retained for a reasonable timeframe, for recoverability. Daily back-ups will be available for recovery for three (3) months. Without additional charge, Provider will furnish the most recent back-ups and copies of the Application to enable Customer to run in production on its Disaster Recovery Site.

Verification Method

The data recovery tests listed under Data Recovery will be used to verify Data Retention. The results of Customer requested restorations will also be recorded.

Subcategory: Response Time

Online Screens

Objective

On-line response time for users of ASSETMAXX services will be generally comparable to response times experienced by users of the same application operating on an appropriately sized and configured server attached directly to the Customer's local area network. This excludes Customer network and internet communication issues and performance limitations. This will be represented by the time for the initial application screen to appear after the user has requested standard database information.

Verification Method

Queries

Objective

Provider will ensure that the production database is tuned so as to facilitate the timely completion of Customer-generated queries and reports. This excludes Customer network and internet communication issues. In the case of Customer-created queries and reports, due to their unpredictable levels of complexity we cannot guarantee the timeliness of certain queries/reports as numerous or cumbersome queries/reports may run slowly and/or detrimentally affect the Customer's general database response times. System load and response time will be consistently monitored to determine if queries are negatively impacting system response time.

Verification Method

Service Level Category 2: Security

This Service Level Category covers two subcategories of data security. The first involves preventing users not authorized to use the Application from using the Application to access Customer data ("Front Door"). The second subcategory involves accessing Customer data from outside the Application in any other manner ("Back Door").

Subcategory: "Frontdoor" Access to Customer Data (via the Application)

Access Authorization

Objective

Customer Application and data will only be accessible by authorized users as defined and managed by the Customer. Customer data is secured in separate database instances.

Verification Method

To be determined by the Customer.

Subcategory: "Backdoor" Access to Customer Data (Outside of the Application)

Customer Network

Objective

If Customer elects to make use of a dedicated telecommunication line, Provider will provide guidelines and technical recommendations to assist Customer in connecting to the Application at the Data Center via its internal communication network beginning at the Customer-provided router at the Provider's site. The Data Center is not ultimately responsible for the dependability or security of the Customer's internal network beyond the router.

Verification Method

The Data Center will verify the delivery of the guidelines and technical recommendations.

Physical Access to the Data Center

Objective

The Data Center has implemented security measures to protect against physical intrusion. Access to the Data Center building and the computer room is limited to Data Center staff only. The Customer retains the right to inspect the physical access to the facility.

Verification Method

Customer may verify by inspection.

Attachment 3 – Fee Schedule

1. Start-up Fee

Provider has the right to 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 ASSETMAXX will be made available to registered users at the following rates:

Number of users desired: <u>4</u> @ \$1,350 per user/per year = <u>\$5,400</u> per year

If additional users are desired, they can be added to the Agreement by contacting the Provider. The rates listed above will apply. Each customer database will be monitored to ensure access is granted only to paying 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 upon 60 days prior written notice to Customer. Provider shall not adjust its fees more often than once per year.

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 twelve-month period.

6. Non-Renewal Fees

In the event that Customer elects to terminate their ASSETMAXX subscription and requires assistance exporting the data, a fee of \$500.00 will apply. This fee will include Provider exporting data into an Excel or ASCII comma delimited file and providing it to Customer on CD-ROM. Note that ASSETMAXX does have export capabilities which can be performed by Customer without assistance, whereby the \$500.00 would not apply.

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.