



ORDER FORM

AssetWorks LLC

998 Old Eagle School Road, Suite 1215
Wayne, PA 19087

Order #: Q-04939-1

Date: 10/9/2019

Ship To

Ruben Salas
City of Costa Mesa
2310 Placentia
Costa Mesa, California 92628
United States
714-327-7481
ruben.salas@costamesaca.gov

Bill To

City of Costa Mesa
PO Box 1200
Costa Mesa, California 92628-1200
United States

This Order Schedule is issued pursuant to Sourcewell Contract # 022217-AWI and the attached AssetWorks Software License, Software Maintenance, and Professional Services Agreements. Parties agree to be bound by those terms and conditions. Pricing below is valid if this Order Form is signed on or by 11/30/2019.

License

Description	QTY	UNIT PRICE	Line Total
FuelFocus ICU License	1.00	USD 2,432.63	USD 2,432.63
Veeder Root Integration License	1.00	USD 1,292.33	USD 1,292.33
License TOTAL:			USD 3,724.96

Maintenance

Description	Line Total
Software Maintenance	USD 750.00
Maintenance TOTAL:	USD 750.00

Year Two Maintenance & Support not to exceed a 5% increase over year one.

Fuel Hardware

Description	QTY	UNIT PRICE	Line Total
FuelFocus Lite Model 1350 2 Hose RF Ready Island Controller with HID Reader & Pedestal	1.00	USD 6,847.50	USD 6,847.50
WAF Box Hi Power w/ mast	1.00	USD 660.09	USD 660.09
SOLA HD Active Tracking Filters with Surge Suppression - DIN Rail Mount	1.00	USD 199.82	USD 199.82
Nozzle Transponders - Universal	2.00	USD 251.62	USD 503.24
Panel Board	1.00	USD 1,299.42	USD 1,299.42
Fuel Shipping Costs	1.00	USD 125.00	USD 125.00
Fuel Hardware TOTAL:			USD 9,635.07

Service

Description	Line Total
Hardware Installation Services	USD 2,460.00
Fuel Software Installer / Trainer	USD 205.00
Remote FuelFocus Site Startup Services	USD 410.00
Project Management Services	USD 1,230.00
Travel Costs	USD 2,000.00
Service TOTAL:	USD 6,305.00

TOTAL: USD 20,415.03

If you have any technical questions related to FuelFocus products and services, please contact Russ Whelan at (909) 921-6724 or russ.whelan@assetworks.com.

NOTES/ASSUMPTIONS

1. This quote is based on site being Fuel Management System Ready.(FMS). FMS Ready means that all FuelFocus System pedestals will be mounted to the appropriate location. All conduits will be connected between the FuelFocus Controllers and pumps, junction boxes and breaker panels. Assumes all dispensers have pulsers and are fuel system compatible. All wires will be pulled and left disconnected at each end. See full FMS Ready description below.
2. Does not include permits, permit fees or site as built drawings.
3. Subject to any applicable state and/or local sales tax, import duties, PST, VAT.
4. Warranty is one (1) year parts with telephone help desk support. Extended warranty plans are available for subsequent years. Warranty expires at 12 months from date of install or 15 months from date of shipment, whichever comes first.
5. Client must have a tested network connection at the fuel island. This connection needs to be able to ping the FleetFocus Server successfully. Failure to provide site in this condition could result in additional charges for labor and travel.
6. Site must have fuel in tanks, dispensers primed and ready to pump fuel for full site certification. Failure to provide site in this condition could result in additional charges for labor and travel.

Following represents a checklist of items that need to be performed to comply with "FMS Ready".

1. Have an electrical contractor mount the FuelFocus Island Controller pedestals and fasten to concrete.
2. Conduit Requirements - Have electrician run a conduit from the master dispensers to pedestal as needed. Our electrical requirements to each FMS Island Controller are as follows:
 1. We will need dedicated power from a circuit breaker panel to each FuelFocus Island Controller. The power for each FMS Controller can be pulled off one circuit breaker.
 2. We will need a dedicated conduit back to the building from each FMS Controller for communication wiring unless RF LAN connectivity will be used. These may be looped also. Please note that a maximum cable length for CAT5/6 is 300 feet.
 3. We will need one conduit from the pedestal to be terminated in the dispenser electrical junction box.
1. We will either need:
 1. A second conduit from the pedestal to the pulser junction box in the dispenser, or
 2. The pulser junction box in the dispenser piped over to the electrical junction box in the dispenser
2. Contractor must mount RFID Antenna centrally to all fuel lanes if RFID option is purchased. Must have conduit from nearest FuelFocus Island Controller to this point. Please discuss location with AssetWorks Project Team.
3. (For Transit Lanes only) Mount Banner sensor in each fuel lane and run conduit from sensor to respective FuelFocus Island Controller.
4. Cable Requirements - Have electrician pull the following cables - leaving at least three feet extra to extend above the top of the pedestal and as much as possible to fit in the electrical junction box within the dispensers: The items lettered below correspond with the same letter of the conduit above.

1. Three 14AWG minimum THHN gas/oil resistant wires for power, neutral, ground to each FMS Controller from breaker panel. Terminate at panel, wire nut FMS System ends and mark breaker. Lock breaker in off position
2. Pull whatever cable is appropriate based on client demands and location parameters to ensure a reliable TCP/IP ethernet connectivity at the fuel island to each Island Control Unit. This may be a CAT5/6 cable, fiber optics or RF Ethernet connectivity. If the TLS Interface option is chosen, there are two methods of connecting the Veeder Root console to FuelFocus. The first method is via a RS232 card installed in the Veeder Root (client responsibility). While this is a less expensive option – RS232 is only rated to communicate effectively if the distance between the Veeder Root and the nearest FuelFocus Controller does not exceed fifty (50) feet. If RS232 is used, a four conductor shielded cable must be installed between the two. Veeder Root connectivity can also be achieved via TCP/IP as an option. This method requires the installation of a ethernet card in the Veeder Root console, and then a CAT5/6 network connection run from the clients network to the Veeder Root – keeping in mind CAT5/6 distance limitations shown above. Procurement, installation, and configuration and programming of either method are the client responsibility.
3. Pull four 14AWG minimum THHN gas/oil resistant wires to each pump/dispenser (eight if it is a two hose pump/dispenser) electrical junction box for control wiring. One of these wires should be white for neutral. Dispenser must be able to handle wired hot at all times when using RFID technology and solenoid will be used for system control.
4. Pull a four conductor 22AWG minimum shielded cable to the dispenser for pulser communication. Please consult with an AssetWorks technician if these distances exceed three hundred (300) feet.
5. Pull the CAT5/6 wire included with WAF Antenna to the FuelFocus Island Controller along with a single 14AWG THHN green wire for grounding purposes.
6. (For Transit Lanes only) Pull included cable for Banner Sensor through conduit. Extend length if needed.

Call AssetWorks to schedule a date for final terminations when all of the above is done.

Note - all wiring and conduits described above are what is needed for FuelFocus Island Controller System only. This document assumes the station and dispensers to be wired already.

INITIAL_____

TERMS OF USE

Price/Specifications

Price and specifications are subject to change without notice. AssetWorks LLC is not responsible for typographical and/or photographic errors.

PAYMENT TERMS

Net 30. All hardware will be billed upon delivery. All FuelFocus Integration Licenses will be billed upon delivery of hardware. Services will be billed monthly as performed.

MISSING, DAMAGED, OR INCORRECT ORDERS

Please inspect all orders upon receipt. Please email fuelsupport@assetworks.com to request an RMA for any missing, damaged, or incorrect orders. You may also call 610-225-8350.

RETURN POLICY

AssetWorks LLC products may be returned within 30-days of invoice date for refund, replacement, or exchange. All product returns must have a Returned Merchandise Authorization (RMA) number issued by AssetWorks marked clearly on the return package, or the package will be refused, and no credit will be issued.

To request an RMA, please email fuelsupport@assetworks.com . RMAs are valid for 15 days from the date of issuance.

The following information is required for all RMAs:

The invoice or packing list number

The product name and part number

Company name, point of contact, mailing address, email address, and telephone number

A reason for the return

If you wish to make a return or exchange, you must present the merchandise within 30 days of purchase. All goods must be returned in their original packaging. If the items are not received in their original and unused condition, a minimum re-stocking fee of 18% will be charged. Product that has been used will not be accepted for return or exchange unless under warranty or maintenance contract. Product that has been altered without the specific authorization by AssetWorks LLC. will not be accepted.

Send returns with the RMA number clearly marked on the package to:

AssetWorks, LLC.

Attn: RMA Department

998 Old Eagle School Road, Suite 1215

Wayne, PA 19087

All returns will be processed and fully inspected. All products must be returned in original condition including packaging, manuals, and accessories (as applicable).

Return Shipping

All returns must be shipped freight pre-paid.

Unauthorized or Refused Returns

Packages without a Return Authorization Number will be refused. Additional charges may apply if all peripherals and accessories are not returned in the original packaging.

Returns Older than 30 Days

Returns older than 30 days from the invoice date will be subject to a 25% restocking fee. Only product that is in current production will be accepted and an RMA must be obtained in advance and clearly marked as stated above. No refunds will be given.

AssetWorks LLC Limited Warranty

Warranty coverage for AssetWorksLLC (FuelFocus) products are described below. Additional support coverage can be purchased with your AssetWorks products. Please consult your local AssetWorks sales professional for annual support and services fees.

The terms and conditions governing your warranty on AssetWorks products are located below. Such terms and conditions supersede all other terms, unless otherwise agreed by AssetWorks.

Warranty Start Date

"Start Date" as used in this policy means the date this product is shipped from AssetWorks manufacturing plus three (3) months or the FuelFocus go live date, whichever comes first.

Limited Hardware Warranty

AssetWorks, LLC. ("FuelFocus") provides a one (1) year limited product hardware warranty to purchasers of FuelFocus products. AssetWorks warrants that the product hardware will be free from defects in materials and workmanship during the warranty period, subject to the following:

Labor and travel costs are not included, unless required under contract specific terms.

AssetWorks will supply new or rebuilt parts to replace parts that are found to be defective while within the warranty period.

New installations must be registered with the FuelFocus Support Center within 48 hours of installation to receive warranty benefits, otherwise, the warranty period commences on the date of the invoice.

Help Desk Support is available between the hours of 8:00AM- 5:00PM Monday through Friday Upon a Hardware System Failure,

AssetWorks will repair or replace such product hardware within fourteen (14) working days of its receipt of the failed hardware, if in advance of its receipt, such hardware (1) was evaluated by AssetWorks Technical Support in person or via telephone, and (2) received a Technical Support RMA number from AssetWorks.

Further, the product hardware must be shipped, shipment pre-paid, to AssetWorks, and the RMA number must be clearly indicated on the shipping box and papers.

Problems caused by faulty installation are not covered under this warranty. This warranty applies only if the equipment has been installed and used in accordance with the AssetWorks Installation Manual.

Use of service personnel other than qualified AssetWorks service providers without prior written approval of the FuelFocus Product Manager will void the warranty claim.

Use of non AssetWorks replacement parts, defects caused by the use of unauthorized addition of non AssetWork parts, or by the unauthorized alteration of FuelFocus parts or equipment will void this warranty.

Damage suffered by FuelFocus equipment resulting from shipping, accident, power surges, neglect, misuse, acts of Nature, or abuse are not covered by this warranty.

Limited Software Warranty

AssetWorks provides a one (1) year limited software warranty to licensees of FuelFocus software accompanying AssetWorks hardware. AssetWorks warrants that the media on which the software is delivered will be free of defects in material and workmanship for a period of one (1) year following delivery of the software to licensee. AssetWorks warrants that the software, when used in accordance with the terms of the AssetWorks software license, will operate substantially as set forth in the applicable AssetWorks Documentation for a period of one (1) year following delivery of the software to licensee.

Technical Support Access

During the warranty period, toll free phone support is offered 5 days per week (8 a.m. to 5:00 p.m., Monday through Friday, except holidays). Calls left after hours will be returned the next business day.

Access to Technical Support after warranty period is on a commercially reasonable basis (unless a AssetWorks Support Contract is purchased for all systems owned by the customer).

Software Updates

During the warranty period, software updates for system software and software products released by AssetWorks are available by contacting AssetWorks Technical Support. System software updates include applicable minor releases (e.g. Release 2.0 to 2.1) to the AssetWorks family of products as well as major feature releases (e.g. Release 2.x to 3.0). Customer must have access to the Internet for Web Browser or FTP downloads as directed by Technical Support. Software updates released after the initial one (1) year warranty period are available as an upgrade product for the then applicable list price.

Warranty Limitations

AssetWorks's warranties as set forth herein ("Warranty") are contingent on proper use of the FuelFocus hardware and software ("Products") and do not apply if the Products have been modified

without AssetWorks's written approval, or if the Products' serial number label is removed, or if the Product has been damaged. The terms of the Warranty are limited to the remedies as set forth in this Warranty.

THIS WARRANTY IS PROVIDED IN LIEU OF ALL OTHER RIGHTS, CONDITIONS AND WARRANTIES. ASSETWORKS MAKES NO OTHER EXPRESS OR IMPLIED WARRANTY WITH RESPECT TO THE SOFTWARE, HARDWARE, PRODUCTS, DOCUMENTATION OR ASSETWORKS SUPPORT, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. ASSETWORKS DOES NOT WARRANT THAT ANY PRODUCTS WILL BE ERROR-FREE, OR THAT ANY DEFECTS THAT MAY EXIST IN ITS PRODUCTS CAN BE CORRECTED. IN NO EVENT SHALL ASSETWORKS BE LIABLE FOR COST OF PROCUREMENT OF SUBSTITUTE GOODS, LOST PROFITS OR ANY OTHER SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST DATA), HOWEVER CAUSED WHETHER OR NOT ASSETWORKS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Contact Us

For more information, please contact your AssetWorks sales representative.

INITIAL_____

Standard Professional Services Terms

All software licenses and the first year maintenance fees will be invoiced upon contract execution. All hardware will be invoiced upon delivery. All services and travel will be invoiced monthly as incurred. All warranties conveyed by the manufacturer to AssetWorks are included

Travel: Expenses will be reimbursed as incurred. Expenses include actual costs for lodging, air and ground travel and per diem rates for meal expenses (corporate rate/government agreement).

All costs quoted in USD

This is a fixed price contract and will be invoiced in full

Additional charges may apply if sites are not ready as described above for both services and travel

Professional Services engagements have 4-8 week lead time from execution of contract/order
When Professional Service days are contracted, they are removed from AssetWorks' capacity and considered sold to the customer, and as a result AssetWorks makes financial plans based upon the revenues it expects to achieve from the full performance of the contract. It is impossible for AssetWorks to know in advance whether or under what circumstances it would be able to resell the service days if the customer does not use them, either as the result of delaying or canceling meetings, tasks or deliverables. In most instances, when customers do not use the contracted time, AssetWorks is unable to resell those days or services. Even when days or services may be resold, it is costly to re-market the services, and such efforts divert effort to do so. While customer days have been held out of AssetWorks' capacity planning, AssetWorks may have turned away or delayed the start of other customers in order to meet AssetWorks' commitment to the customer. For these reasons, AssetWorks and the customer agree that in the event of delay or cancellation of scheduled project tasks and meetings at the customer's request within two weeks of execution, AssetWorks shall be due compensation equal to the contracted amount to deliver the services cancelled including any travel expenses incurred in preparation for the delayed or cancelled services.

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In the event Customer's business practices require that Customer issue a purchase order number prior to payment of any AssetWorks invoices issued under this Agreement, then such purchase order number must be entered below. Customer's execution of the Order Form without designating a purchase order number shall be deemed Customer's acknowledgement that no purchase order number is required for payment of invoices hereunder.

Purchase Order Number: _____

Accepted by Customer:

Signature: Kelly Telford
Name (Print): Kelly Telford
Title: Finance Director
Date: 11/5/19

Accepted by AssetWorks:

Signature: Steven Decholini
Name (Print): Steven Decholini
Title: Director of Finance
Date: 10/16/19

Please sign and email to Tyler Beaty at tyler.beaty@assetworks.com.

THANK YOU FOR YOUR BUSINESS!

AssetWORKS

SOFTWARE LICENSE AND RELATED HARDWARE PURCHASE AGREEMENT

FOR AND IN CONSIDERATION of the mutual benefits accruing and expected to accrue hereunder, this Software License Agreement ("Agreement") is made as of the date of last signature ("Effective Date") by and between AssetWorks LLC, a Delaware limited liability company with offices at 998 Old Eagle School Road, Suite 1215, Wayne, PA 19087 ("AssetWorks"), and the Customer ("Customer"). Intending to be legally bound, the parties hereby mutually agree to the following terms and conditions:

1. HARDWARE PURCHASE AND SOFTWARE LICENSE

- A. Customer shall purchase the hardware listed on The Order Form, if any. Title to the hardware shall pass upon shipment.
- B. AssetWorks grants to Customer a non-exclusive, perpetual (subject to Section 5) non-transferable license for the number of units specified in The Order Form to make use of the software specified in The Order Form (herein "Software") on the Customer's database servers and application servers ("Environment"). Except as provided above, use of Software in excess of limits defined in The Order Form or other than on the Environment requires additional fees. Customer's license is to use the Software in its own business; Customer has no right to use the Software in processing work for third parties.
- C. Customer shall have the right to use only one copy or image of the Software for production purposes to manage up to the number of Active Equipment Units identified in the Order Form and shall not copy or use the Software for any other purpose except (i) for archival purposes, (ii) in connection with a disaster recovery program, and (iii) for the purpose of testing the operation of the Software, provided such testing copy shall not be used in a live production environment. Customer may increase the number of authorized Active Equipment Units by executing a subsequent Order Form and paying in full the applicable fees. Upon signing the subsequent Order Form and paying in full the applicable fees, Customer shall have the right to monitor the revised number of Active Equipment Units as set forth in the subsequent Order Form. "Active Equipment Unit" shall mean any in service unit to which work orders, fuel tickets, or usage tickets are posted.
- D. If any third party software is provided to Customer pursuant to this Agreement, such license shall be in accordance with terms set forth in the Order Form.
- E. Source Code shall mean software in human-readable form, including all appropriate programmer's comments, data files and structures, header and include files, macros, make files, object libraries, programming tools not commercially available, technical specifications, flowcharts and logic diagrams, schematics, annotations and documentation reasonably required or necessary to enable a competent independent third party programmer to create, operate, maintain, modify and improve such software without the help of any other person, and with data files containing Source Code in standard ASCII format readable by a text editor.
- F. Except as expressly authorized under this Agreement, Customer shall not (i) sell, rent, lease, timeshare, encumber, license, sublicense, transfer or assign the Software or Documentation; (ii) attempt to decompile, disassemble or reverse engineer the Software in whole or in part, or otherwise attempt to derive the Source Code of the software.

2. FEES AND PAYMENTS

3. Customer shall pay AssetWorks the fees specified in the Order Form. All fees are payable by Customer within thirty (30) days of receipt of invoice. Software is invoiced upon contract execution. Hardware is invoiced upon shipment.
4. Customer shall be responsible for all taxes and charges assessed or imposed with respect to amounts payable hereunder, including, without limitation, state and local, occupation, sales, use or excise taxes paid or payable by AssetWorks, exclusive, however, of taxes imposed on AssetWorks' net income by the United States or any political subdivision thereof.
5. AssetWorks reserves the right to apply a late payment charge of 1.5% per month to amounts outstanding more than thirty (30) days after the date of the invoice.

3. NON-DISCLOSURE

3. Subject to the other paragraphs in this Section 3, Customer agrees that the Software shall be held in confidence by Customer and shall not be disclosed to others without the prior written consent of AssetWorks, which may be withheld by AssetWorks in its sole discretion. This

obligation to hold confidential does not apply to any portion of the Software (1) developed by Customer and in Customer's possession prior to the receipt of same from AssetWorks; (2) which at the time of disclosure is part of the public domain through no act or failure to act by Customer; or (3) which is lawfully disclosed to Customer without restriction on further disclosure by another party who did not acquire same from AssetWorks.

4. AssetWorks provides documentation for the Software electronically. The Customer may copy, in whole or in part, any such documentation relative to the Software for Customer's internal use consistent with this Agreement.
5. Customer's records with regard to use of the Software shall be made available to AssetWorks at all reasonable times at AssetWorks' request to audit Customer's compliance with this Agreement, and Customer shall certify to the truth and accuracy of such records.

4. WARRANTIES AND LIMITATION OF LIABILITY

3. Hardware purchased under this Agreement has a limited one year warranty. This limited hardware warranty covers defects in materials and workmanship in hardware products. The warranty does not cover external causes such as accident, abuse, misuse, or problems with electrical power, servicing not authorized by AssetWorks, usage that is not in accordance with product instructions, failure to follow the product instructions or failure to perform preventive maintenance and normal wear and tear. ASSETWORKS'S RESPONSIBILITY FOR DEFECTS IN HARDWARE IS LIMITED TO REPAIR OR REPLACEMENT OF THE PRODUCT AS SET FORTH IN THIS WARRANTY STATEMENT. EXCEPT FOR THE LIMITED WARRANTY EXPRESSLY STATED HEREIN FOR HARDWARE, ASSETWORKS MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PERFORMANCE, SUITABILITY, OR NON-INFRINGEMENT. ASSETWORKS EXPRESSLY DISCLAIMS ALL WARRANTIES NOT STATED IN THIS LIMITED WARRANTY.
4. AssetWorks represents that it has the right to license the Software to Customer as provided in Section 1. AssetWorks further represents that the Software will conform to the description contained in the documentation provided or published by AssetWorks ("Documentation") but, except as provided in this Section 4, AssetWorks makes no other representations, warranty, or guarantees, express or implied, with respect to the accuracy, completeness, or usefulness of the Software, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. In the event the Software fails to conform to the description contained in the Documentation, AssetWorks' sole obligation shall be to correct the errors. This limited warranty is in lieu of all liabilities or obligations of AssetWorks for damages arising out of or in connection with the delivery, use or performance of the Software.
5. AssetWorks does not guarantee the privacy, security, authenticity or non-corruption of any information transmitted through the internet or any mobile or wireless network, or any information stored in any system connected to the internet or to any mobile or wireless network. AssetWorks shall not be responsible for any claims, damages, costs or losses whatsoever arising out of or in any way related to Customer's connection to or use of the internet or of any mobile or wireless network.
6. AssetWorks will not be liable to Customer or any third party for any claims, expenses, damages, costs or losses whatsoever arising out of or in any way related to Customer's use of the Software insofar as such Software may be used to store, transmit, display, disclose or otherwise use data or information which is considered private, confidential, proprietary or otherwise exempt from public disclosure under applicable law.
7. AssetWorks will defend, at its own expense, any action brought against Customer to the extent that it is based on a claim that the Software supplied by AssetWorks infringes a United States patent or copyright, and AssetWorks will pay those costs and damages finally awarded against Customer in any such action that are attributable to any such claim; provided, such defense and payments are conditioned on the following: (1) that AssetWorks shall be promptly notified in writing by Customer following its receipt of any such claim; (2) that AssetWorks shall have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; (3) should the Software become, or in AssetWorks' opinion is likely to become, the subject of a claim of infringement of a United States patent or copyright, then Customer shall permit AssetWorks, at its option and expense, either to (A) procure for Customer a non-infringing license to use the Software; (B) modify the Software so that it becomes non-infringing; (C) procure for Customer a depreciated credit for the Software and accept its return. Depreciation shall be an equal amount per year over the lifetime of the Software, which the parties agree shall be five (5) years. AssetWorks shall have no liability to Customer under any provision of this clause with respect to any claim of patent or copyright infringement that is based on Customer's unauthorized use or combination of the Software with software or data not supplied by AssetWorks as part of the Software.
8. Customer agrees to indemnify and defend AssetWorks against any claims made by any third party against AssetWorks arising out of Customer's use of the Software unless such claims are due to the negligence or willful misconduct of AssetWorks.
9. Customer agrees that AssetWorks' total liability to Customer for any and all damages whatsoever arising out of or in any way related to this Contract from any cause, including but not limited to negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed the amount of fees paid to AssetWorks for either the Software License or Hardware from which the claim arose.

10. In no event shall AssetWorks be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought even if AssetWorks has been advised of the likelihood of such damages, and notwithstanding any failure of essential purpose of any limited remedy.
11. The warranty period for the Software shall extend for a period of 90 days from the date of delivery of the Software but in no event later than one year from the date of execution of this Agreement. During the warranty period, in the event that the Customer encounters an error and/or malfunction whereby the Software does not conform to the description in the Documentation, AssetWorks will respond as follows:
 - 11.1. In the event that, in the mutual and reasonable opinion of AssetWorks and the Customer, there exists an error or nonconformance to the Documentation, AssetWorks will take such steps as are reasonably required to correct the error with due dispatch.
 - 11.2. In the event that, in the mutual and reasonable opinion of AssetWorks and the Customer, the error or nonconformance to the Documentation does not constitute a serious impediment to the normal intended use of the Software, AssetWorks will correct the error and distribute the correction to the Customer in accordance with AssetWorks' normal Software revision schedule.

5. TERMINATION

1. The license conveyed pursuant to Section 1, B may be terminated by AssetWorks in the event of breach or default by Customer under this Agreement provided AssetWorks notifies Customer in writing of the breach or default and Customer does not correct same within thirty (30) days of AssetWorks' written notice.
2. In addition, Customer shall have the right to terminate this Agreement at any time; provided such termination shall not relieve Customer of its obligations (1) to pay any remaining unpaid balance for the total software license fee (as per the Order Form, and (2) to honor the terms of the Professional Services Agreement or the Software Maintenance Agreement, which were independently executed and each of which must be terminated in accordance with its terms.
3. All Software and Documentation shall be and will remain the property of AssetWorks. Upon termination of this Agreement, whatever the reason, such Software and Documentation and any copies thereof made by Customer pursuant to Section 3, B and C shall be promptly returned to AssetWorks.

6. ASSIGNMENT

Neither party may assign this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld. Notwithstanding the above restriction, in the event of an assignment or novation of this Agreement to an AssetWorks' affiliate pursuant to an internal corporate reorganization, AssetWorks shall not require Customer's prior written consent.

7. ENTIRE AGREEMENT

This Agreement supersedes all prior proposals, oral or written, all previous negotiations and all other communications or understandings between AssetWorks and Customer with respect to the subject matter hereof. It is expressly agreed that if Customer issues a purchase order or other document for the services provided under this Agreement, such instrument will be deemed for Customer's internal use only, and any provisions contained therein shall have no effect whatsoever upon this Agreement. This Agreement sets forth the sole and entire understanding between AssetWorks and Customer with respect to the subject matter. No amendments to this Agreement, either at the execution or subsequently, shall be binding on AssetWorks or Customer unless agreed to in writing by both parties.

8. SCHEDULES

The Order Form and any additional schedules specified on the Order Form are hereby incorporated into this Agreement.

9. GENERAL TERMS

1. All provisions of this Agreement, which by their nature should survive termination of this Agreement, will so survive for the applicable statute of limitations period.
2. No delay or failure by either party to exercise any right hereunder, or to enforce any provision of this Agreement will be considered a waiver thereof. No single waiver will constitute a continuing or subsequent waiver. To be valid, a waiver must be in writing, but need not be supported by consideration.

3. If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, such provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of this Agreement will not be affected.
4. This Agreement, including its interpretation and enforcement, will be governed by the substantive laws of the State of California excluding its conflict of laws rules.
5. Any communication or notice hereunder must be in writing, and will be deemed given and effective: (i) when delivered personally with proof of receipt; (ii) when sent by e-mail; (iii) when delivered by overnight express; or (iv) three (3) days after the postmark date when mailed by certified or registered mail, postage prepaid, return receipt requested and addressed to a party at its address for notices. Such address may be changed by a notice delivered to the other party in accordance with the provisions of this Section.
6. In the event of any dispute arising in the performance of this Agreement, AssetWorks and the Customer will seek to resolve such dispute through good faith, amicable discussions and negotiations. In any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs, in addition to any other relief ordered by the court. Such fees and costs will include those incurred in connection with the enforcement of any resulting judgment or order, and any post judgment order will provide for the right to receive such attorneys' fees and costs.
7. Neither party will be liable for any failure to perform or any delay in performing any of its obligations hereunder when such failure or delay is due to circumstances beyond its reasonable control and without its fault (Force Majeure), including without limitation, any natural catastrophe, fire, war, riot, strike, or any general shortage or unavailability of materials, components or transportation facilities, or any governmental action or inaction. Upon the occurrence of such event of Force Majeure, the affected party will immediately give notice to the other party with relevant details, and will keep the other party informed of related developments.

AssetWORKS

ATTACHMENT 2

SOFTWARE MAINTENANCE AGREEMENT

FOR AND IN CONSIDERATION of the mutual benefits accruing and expected to accrue hereunder, this Software Maintenance Agreement ("Agreement") is made as of the date of last signature ("Effective Date") by and between AssetWorks LLC, a Delaware limited liability company with offices at 998 Old Eagle School Road, Suite 1215, Wayne, PA 19087 ("AssetWorks"), and the Customer ("Customer"). Intending to be legally bound, the parties hereby mutually agree to the following terms and conditions:

BACKGROUND

AssetWorks and Customer are parties to a Software License Agreement, pursuant to which Customer has licensed certain software products ("Software" or "Product") from AssetWorks.

The Software paid-up license fee includes a warranty without charge as set forth in the Software License Agreement.

The purpose of this Agreement is to set forth the terms and conditions upon which Customer has agreed to subscribe to support and maintenance for the Software ("Maintenance") from AssetWorks.

TERMS AND CONDITIONS

1. Term

Maintenance shall commence immediately upon the Effective Date and shall have a term of twelve (12) months. The term shall automatically renew each year thereafter for an additional twelve (12) month period unless terminated as set forth below.

2. Correction of Deviations

In the event that the Customer encounters an error and/or malfunction ("Deviation") in the Software, it shall communicate the circumstances and any supporting information to AssetWorks. Upon receipt, AssetWorks will respond as follows:

- a. In the event that, in the mutual and reasonable opinion of AssetWorks and the Customer, there exists a Deviation that does not constitute a serious impediment to the normal intended use of the Software, AssetWorks will correct the Deviation and distribute the correction to the Customer in accordance with AssetWorks' normal Software revision schedule.
- b. In the event that, in the mutual and reasonable opinion of AssetWorks and the Customer there exists a Deviation that does constitute a serious impediment to the normal, intended use of the Software, AssetWorks will take such steps as are reasonably required to correct the Deviation.

3. Software Revisions and New Versions

- a. The Software may be revised by AssetWorks as a result of the correction of Deviations and/or the release of upgrades or improvements or modifications designed to improve the performance of the Software and/or to increase the capabilities of the Software (hereafter "Revisions"). Revisions shall be of two kinds:
 - i. Revisions that the Customer is obliged to implement ("Mandatory Revisions");
 - ii. Revisions that may be implemented by the Customer at its option ("Optional Revisions").
 - iii. No charge shall be made to the Customer for either Mandatory Revisions or Optional Revisions while under a current Maintenance Agreement.

- b. New products ("New Products") may be added to the Software by AssetWorks from time to time. Compared to a Revision, New Products substantially improve the performance of the Software and/or substantially increase its functionality and capability. AssetWorks, in its sole discretion, shall decide which upgrades and improvements will be issued as Revisions without charge and which shall be issued as New Products for which there may be a charge.

4. Telephone Hotline Assistance

AssetWorks, at its expense, shall make available technically qualified personnel to respond to all reasonable telephone requests, Monday through Friday, excluding State holidays, during normal business hours, that may be made by the Customer relating to the application and operation of the Software. At other times such personnel are available by pager for emergencies.

5. Technical Literature

AssetWorks shall make available to the Customer all technical literature in electronic format that is considered by AssetWorks to be relevant to the Software and its use within the scope of Customer's operations.

6. Transmission

All Revisions and New Products will be made available for download by the Customer via access to the AssetWorks website or other suitable media, at the option of AssetWorks. The Customer shall be solely responsible for executing the appropriate instructions in order to transfer the Revisions or New Products onto its system.

7. Remote Diagnostic Access

The Customer shall provide appropriate remote access capabilities with which AssetWorks may, with the permission of the Customer, remotely access the Software for the purpose of remote diagnostics and support.

8. Proper Use

- a. Customer shall not modify the Software or Source Code as defined in the Software License Agreement unless specifically authorized by AssetWorks in writing.
- b. The Customer agrees that all reasonable effort shall be taken to ensure that neither the Software nor data files are misused or modified without the express written permission of AssetWorks.
- c. In the event that the Customer or its agents misuses or modifies the Software or data files, including, but not limited to, inserting, updating, deleting or otherwise modifying data through a means other than the Software, although AssetWorks is not obligated to correct such misuse, AssetWorks shall be entitled to attempt to correct the situation, if possible, at Customer's expense.
- d. In the event that diagnostic assistance is provided by AssetWorks, which, in the reasonable opinion of AssetWorks and the Customer, relates to problems not caused by a Deviation in the Software, such assistance shall be at the Customer's expense.

9. Software Maintenance Fee – Paid Up License

In consideration of the Maintenance services to be provided by AssetWorks for the initial twelve month period hereunder, Customer shall pay to AssetWorks an amount set forth on the Order Form. For each twelve month period thereafter, Customer will pay to AssetWorks fees in accordance with this Agreement.

10. Additional Software Maintenance Fee – Paid Up License

In the event the Customer acquires AssetWorks Software licenses in addition to the Software that indicated in the Order Form (the "Additional Software"), the Maintenance shall automatically be extended to cover the Additional Software, and the Customer shall pay an additional annual Maintenance fee in an amount equal to twenty percent (20%) of the then current license fee for the Additional Software at the time of acquisition. In the event that Customer purchases any custom interfaces, APIs or other software (Developed Software), AssetWorks may also charge maintenance on the Developed Software in an amount equal to twenty percent (20%) of the cost of the Developed Software.

11. Other Fees and Expenses

If onsite maintenance is required, Customer will pay reasonable travel and living expenses of AssetWorks' employees or agents, which shall be billed and paid as the expenses are incurred.

12. Payment Terms

- a. Annual payments for Maintenance will be due in advance of the commencement of the initial one-year term of the Maintenance and on each anniversary thereafter.
- b. AssetWorks reserves the right to change the annual Maintenance fee by providing Customer written notice of the increase at least thirty (30) days prior to any scheduled renewal date.
- c. AssetWorks reserves the right to apply a late payment charge of 1.5% per month to amounts outstanding more than thirty (30) days after the date of the invoice.

13. Default and Termination

- a. The Customer shall have the right to terminate Maintenance upon delivery of written notice at least ninety (90) days prior to any scheduled renewal date or within thirty (30) days notice of a price increase.
- b. AssetWorks may cancel Maintenance in the event that the Customer does not implement a Mandatory Revision within sixty (60) days of receipt thereof or such longer period as AssetWorks may consent to in writing. In the event that Customer does not implement a Mandatory Revision within thirty (30) days following receipt of written notice from AssetWorks of Customer's failure to implement a Mandatory Revision, AssetWorks may then cancel Maintenance, effective immediately, by notice in writing to the Customer.
- c. In the event of any breach of the terms and conditions of this Agreement by the Customer, AssetWorks will, by written notice to the Customer, give the Customer a period of thirty (30) days within which to institute remedies to correct such breach. In the event that such breach has not been corrected to AssetWorks' satisfaction within said thirty (30) day period, AssetWorks may then cancel Maintenance, effective immediately, by notice in writing to the Customer.
- d. In the event that Maintenance is terminated by AssetWorks, AssetWorks shall have no continuing obligations to the Customer of any nature whatsoever with respect to Maintenance. Furthermore, termination by AssetWorks pursuant to the provisions of this Agreement shall be without prejudice to any right or recourse available to AssetWorks, and without prejudice to AssetWorks' right to collect any amounts, which remain due to it hereunder.

14. Limitation of Liability

- a. Customer agrees that AssetWorks' total liability to Customer for any and all damages whatsoever arising out of or in any way related to this Contract from any cause, including but not limited to negligence, errors, omissions, strict liability, breach of contract or breach of warranty shall not, in the aggregate, exceed fees paid to AssetWorks for software maintenance directly related to this Agreement in the 12 months preceding the date on which the claim arose.
- b. In no event shall either party be liable for special, indirect, incidental, economic, consequential or punitive damages, including but not limited to lost revenue, lost profits, replacement goods, loss of technology rights or services, loss of data, or interruption or loss of use of software or any portion thereof regardless of the legal theory under which such damages are sought even if the party has been advised of the likelihood of such damages, and notwithstanding any failure of essential purpose or the existence of any other limited remedy.

15. General Terms

- a. Neither AssetWorks nor Customer will assign or transfer its interest in this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld. Notwithstanding the above restriction, in the event of an assignment or novation of this Agreement to an AssetWorks' affiliate pursuant to an internal corporate reorganization, AssetWorks shall not require Customer's prior written consent.
- b. All provisions of this Agreement, which by their nature should survive termination of this Agreement, will so survive.

- c. No delay or failure by either party to exercise any right hereunder, or to enforce any provision of this Agreement will be considered a waiver thereof. No single waiver will constitute a continuing or subsequent waiver. To be valid, a waiver must be in writing, but need not be supported by consideration.
- d. If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, such provision will be modified to the minimum extent necessary to make it legal, valid and enforceable, and the remaining provisions of this Agreement will not be affected.
- e. This Agreement, including its interpretation and enforcement, will be governed by the substantive laws of the State of California excluding its conflict of laws rules.
- f. Any communication or notice hereunder must be in writing, and will be deemed given and effective: (i) when delivered personally with proof of receipt; (ii) when sent by e-mail; (iii) when delivered by overnight express; or (iv) three (3) days after the postmark date when mailed by certified or registered mail, postage prepaid, return receipt requested and addressed to a party at its address for notices. Such address may be changed by a notice delivered to the other party in accordance with the provisions of this Section.
- g. In the event of any dispute arising in the performance of this Agreement, AssetWorks and the Customer will seek to resolve such dispute through good faith, amicable discussions and negotiations. In any action at law or in equity to enforce or interpret the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs, in addition to any other relief ordered by the court. Such fees and costs will include those incurred in connection with the enforcement of any resulting judgment or order, and any post judgment order will provide for the right to receive such attorneys' fees and costs.
- h. Neither party will be liable for any failure to perform or any delay in performing any of its obligations hereunder when such failure or delay is due to circumstances beyond its reasonable control and without its fault (Force Majeure), including, without limitation, any natural catastrophe, fire, war, riot, strike, or any general shortage or unavailability of materials, components or transportation facilities, or any governmental action or inaction. Upon the occurrence of such event of Force Majeure, the affected party will immediately give notice to the other party with relevant details, and will keep the other party informed of related developments.
- i. This Agreement constitutes the entire agreement between the parties and supersedes all prior or contemporaneous oral, and all prior written, negotiations, commitments and understandings of the parties relating to the subject matter hereof. This Agreement may not be modified except by a writing executed by both parties. It is understood that terms and conditions, if any, included in Customer's purchase order or similar document are for Customer's internal purposes only and any provisions contained therein shall have no effect whatsoever upon this Agreement.

AssetWORKS

PROFESSIONAL SERVICES AGREEMENT

FOR AND IN CONSIDERATION of the mutual benefits accruing and expected to accrue hereunder, this Professional Services Agreement ("Agreement") is made as of the date of last signature ("Effective Date") by and between AssetWorks LLC, a Delaware limited liability company with offices at 998 Old Eagle School Road, Suite 1215, Wayne, PA 19087 ("AssetWorks"), and the Customer ("Customer"). Intending to be legally bound, the parties hereby mutually agree to the following terms and conditions:

WHEREAS, Customer requires professional services; and

WHEREAS, AssetWorks is willing to provide such services.

NOW, THEREFORE, in consideration of the mutual terms, conditions and covenants set forth herein, the parties agree as follows:

1. Services / Statement of Work

AssetWorks will perform the professional services ("Services") described in the Scope of Work ("Scope of Work"). The terms of this Agreement shall control any Additional Scopes of Work that may be executed by the parties during the Term of this Agreement. No Statement of Work shall be of any force and effect unless and until executed by both AssetWorks and Customer.

2. Effective Date; Term

This Agreement shall be effective until the Agreement has been terminated in accordance with sections 11, 12 or 13 hereof.

3. Price and Payment Terms

- a. Each Statement of Work will either be on a time and material basis or a fixed price basis, specified in the Statement of Work. The Statement of Work may or may not include a definitive list of "Deliverables" that must be completed by AssetWorks. In some instances, the Statement of Work will include a date by which "Deliverables" must be completed.
- b. In the event that Services result in greater AssetWorks duties than contemplated by the Statement of Work, Customer will work closely and in good faith with AssetWorks to modify the Statement of Work to ensure that the Customer's requirements are addressed and AssetWorks' fees shall be adjusted to reflect increased Customer requirements.
- c. Unless specifically addressed in the Statement of Work, all travel and expenses incurred will be extra and billed at the time of incurrence.
- d. Invoiced amounts are due and payable 30 days from the date of the invoice. 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).
- e. Custom modules, interfaces and other software can be placed under the AssetWorks Software Maintenance program. The cost for software maintenance is typically 20% of the cost of the custom build annually.
- f. AssetWorks reserves the right to apply a late payment charge of 1.5% per month, or the maximum rate permitted by law if lower, to amounts outstanding more than thirty (30) days after the date of the invoice and AssetWorks retains the right, in AssetWorks' sole discretion and in addition to its other rights and remedies, to cease further performance of the Statement of Work.
- g. Bill to Address. The invoice will be mailed to the Customer address at the top of this Agreement unless otherwise indicated in the Statement of Work.

4. Resources to be Provided by Customer

- a. Customer shall provide, maintain and make available to AssetWorks, at Customer's expense and in a timely manner, the resources described in this section 4, the Statement of Work, and such other additional resources as AssetWorks may from time to time reasonably request in connection with AssetWorks performance of the Services. Delays in the provision of these resources may result in delays in the performance of the Services, or an increase in the Price.

- b. Customer will designate qualified Customer personnel or representatives to consult with AssetWorks on a regular basis in connection with the Services. Customer will furnish such documentation and other information as is reasonably necessary to perform the Services.
- c. Customer shall furnish access to Customer's premises, and appropriate workspace for any AssetWorks personnel working at Customer's premises, as necessary for performance of those portions of the Services to be performed at Customer's premises.
- d. Customer shall meet all assumptions noted on the Statement of Work.

5. Relationship of the Parties

The parties are independent contractors and under no circumstances will either be deemed to be an agent, partner, legal representative, employee or joint venture partner of the other party.

6. Subcontractors

AssetWorks may engage subcontractors to assist in performing Services without the prior written consent of Customer; provided, AssetWorks shall supervise such sub-contractors and the Services performed by them to the same extent as if AssetWorks performed the work.

7. Confidentiality

- a. Because either party may have access to information of the other party that the other party considers to be confidential or proprietary ("Confidential Information"), each party will maintain all Confidential Information in confidence and will use it solely in the discharge of its obligations under this Agreement and any applicable Statement of Work. Nothing herein will be deemed to restrict a party from disclosing Confidential Information to its employees and subcontractors in the discharge of such obligations.
- b. Confidential Information will not include information that (i) is, or becomes, generally known or available through no fault of the, recipient; (ii) is known to the recipient at the time of its receipt from the disclosing party; (iii) the disclosing party provides to a third party without restrictions on disclosure; (iv) is subsequently and rightfully provided to the recipient by a third party without restriction on disclosure; (v) is independently developed by the recipient, without reference to the disclosing party's Confidential Information; or (vi) is required to be disclosed pursuant to a governmental agency or court subpoena, provided the recipient promptly notifies the disclosing party of such subpoena to allow it reasonable time to seek a protective order or other appropriate relief.
- c. Because of the unique nature of the Confidential Information, each party agrees that the disclosing party may suffer irreparable harm in the event the recipient fails to comply with its obligations under this Section G, and that monetary damages may be inadequate to compensate the disclosing party for such breach. Accordingly, the recipient agrees that the disclosing party may, in addition to any other remedies available to it, be entitled to injunctive relief.

8. Intellectual Property

- a. Customer and AssetWorks shall each retain ownership of, and all right, title and interest in and to, their respective pre-existing Intellectual Property, and no license therein, whether express or implied, is granted by this Agreement or as a result of the Services performed hereunder. To the extent the parties wish to grant to the other rights or interests in pre-existing Intellectual Property, separate license agreements on mutually acceptable terms will be executed.
- b. The Services performed, code developed and any Intellectual Property produced pursuant to this Agreement are not "works for hire."
- c. As used herein, "Intellectual Property" shall mean inventions (whether or not patentable), works of authorship, trade secrets, copyright, techniques, know-how, ideas, concepts, algorithms, and other intellectual property incorporated into any Statement of Work or Deliverable whether or not first created or developed by AssetWorks in providing the Services.

9. Non-Solicitation

During the term of this Agreement, and for one year thereafter, Customer shall not solicit the employment of, or contract for the services of, any person who is/was an employee, agent, or subcontractor AssetWorks during the term of this Agreement. Nothing in this section shall prohibit Customer party from placing a bone fide public advertisement for employment which is not specifically targeted at AssetWorks employees and Customer shall not be restricted from hiring any such person who responds to any such general solicitation or public advertisement so long as no direct solicitation of such person has occurred.

10. Taxes

- a. In no event whatsoever shall AssetWorks be liable for sales, use, business, gross receipts or any other tax that may be levied by any State or Federal Government entity against a contractor to such governmental entity other than taxes upon income earned by AssetWorks for the goods and/or services provided pursuant this Agreement. This exclusion of tax liability is also applicable to any goods and/or services that may be provided by AssetWorks under any later task order or amendment hereto regardless of changes in legislation or policy.
- b. In the event a taxing authority conducts an audit of this Agreement and determines that an additional tax should have been imposed on the Services or Deliverables provided by AssetWorks to Customer (other than those taxes levied on AssetWorks income), Customer shall reimburse AssetWorks for any such additional tax, including interest and penalties thereon. Similarly, if a taxing authority determines that a refund of tax is due as it relates to the Services or Deliverables provided by AssetWorks to Customer (except those taxes relating to AssetWorks income), AssetWorks shall reimburse Customer such refund, including any interest paid thereon by the taxing authority.

11. Termination for Default

Either party may terminate this Agreement or any Statement of Work 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. In addition, AssetWorks may terminate this Agreement or any Statement of Work effective immediately upon written notice to Customer if Customer fails to make any payment in full as and when due hereunder. Termination of a Statement of Work shall not terminate this Agreement.

Upon termination for whatever reason and regardless of the nature of the default (if any), Customer agrees to pay AssetWorks the full value for all goods and/or services provided to, and accepted by, Customer up to and including the date of termination.

12. Termination for Convenience

Notwithstanding any other provision in this Agreement, either party may terminate this Agreement by providing 90 days notice of intent to terminate.

13. Effect of Termination

The Terms of this Agreement shall survive for any Statement of Work which is still pending at the time of termination until the conclusion of the Statement of Work.

14. Indemnification

AssetWorks agrees to defend and indemnify Customer from and against third party claims, judgments, and awards, as well as the reasonable costs related thereto (hereinafter collectively referred to as "Damages") to the extent such Damages result from the gross negligence or willful acts or omissions of AssetWorks occurring in the performance of its obligations hereunder. AssetWorks shall not be responsible for any damages or liability resulting, in whole or in part, from the negligence or willful misconduct of any third party, Customer its employees, consultants or agents.

Indemnification is conditioned on the following: (1) that the indemnifying party shall be promptly notified in writing by the indemnified party following its receipt of any such claim; (2) that the indemnifying party shall have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise and (3) that the total indemnification obligation, including reasonable attorney's fees and costs, is limited to \$250,000.

15. Limited Warranty

- a. AssetWorks warrants that the Services provided under this Agreement shall be performed with that degree of skill and judgment normally exercised by recognized professional firms performing the same or substantially similar services. In the event of any breach of the foregoing warranty, provided Customer has delivered to AssetWorks timely notice of such breach as hereinafter required, AssetWorks shall, at its own expense, in its discretion either (1) re-perform the non-conforming Services and correct the non-conforming Deliverables to conform to this standard; or (2) refund to Customer that portion of the Price received by AssetWorks attributable to the non-conforming Services and/or Deliverables. No warranty claim shall be effective unless Customer has delivered to AssetWorks written notice specifying in detail the non-conformities within 90 days after performance of the non-conforming Services or tender of the non-conforming Deliverables. The remedy set forth in this section 10(a) is the sole and exclusive remedy for breach of the foregoing warranty.
- b. **ASSETWORKS SPECIFICALLY DISCLAIMS ANY OTHER EXPRESS OR IMPLIED STANDARDS, GUARANTEES, WARRANTIES OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION ANY 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.**

- c. Customer represents and warrants to AssetWorks that Customer has the right to use and furnish to AssetWorks for AssetWorks use in connection with this Agreement any information, specifications, data or Intellectual Property that Customer has provided or will provide to AssetWorks in order for AssetWorks to perform the Services and to create the Deliverables identified in the Order Form.

16. Limitation of Liability

- a. Customer hereby agrees that AssetWorks total liability to Customer 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, statutory liability or otherwise, shall not, in the aggregate, exceed the fees paid to AssetWorks during the previous 12-month period under the specific Statement of Work under which the claim arose, or, only if the claim did not arise under a Specific Statement of Work, the fees paid to AssetWorks during the previous 12-month period. The parties acknowledge and agree to the foregoing liability risk allocation. Any claim by Customer against AssetWorks relating to this Agreement must be made in writing and presented to AssetWorks within six (6) months after the date on which this Agreement expires or is otherwise terminated.
- b. In no event shall either AssetWorks nor Customer be liable to the other for any punitive, exemplary, special, indirect, incidental or consequential damages (including, but not limited to, lost profits, lost business opportunities, 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 the parties have been advised of the possibility of such damages or loss and notwithstanding any failure of essential purpose of any limited remedy.

17. Notices

Any communication or notice hereunder must be in writing, and will be deemed given and effective: (i) when delivered personally with proof of receipt; (ii) when sent by e-mail; (iii) when delivered by overnight express; or (iv) three (3) days after the postmark date when mailed by certified or registered mail, postage prepaid, return receipt requested and addressed to a party at its address for notices. Such address may be changed by a notice delivered to the other party in accordance with the provisions of this Section.

18. Insurance

AssetWorks shall maintain the following insurance during the term of this Agreement:

- a. Worker's Compensation and Employer's Liability Insurance in accordance with applicable law.
- b. Commercial General Liability Insurance on a per occurrence basis with limits of liability not less than \$1,000,000 per occurrence and aggregate combined single limit, Personal Injury, Bodily Injury and Property Damage.
- c. Automobile Liability Insurance with limits of liability of not less than \$1,000,000 per occurrence combined single limit including Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- d. Professional Errors and Omissions Insurance which shall include Consultant's Computer Errors and Omissions Coverage, with limits not less than \$1,000,000 per claim and in the aggregate.

19. 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.

20. 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.

21. 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.

22. Assignment

Neither party may sell, assign, transfer, or otherwise convey any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, AssetWorks may without violation of this paragraph engage the services of independent contractors to assist in the performance of its duties hereunder.

23. Governing Law

This Agreement, including its interpretation and enforcement, will be governed by the substantive laws of the State of California excluding its conflict of laws rules.

24. 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.

25. 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.

26. Multiple Copies or Counterparts of Agreement

This Agreement and any Statement of Work 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.

27. 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, epidemics, pandemics, 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.

28. Relationship of Parties

AssetWorks 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.

29. 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.

30. 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.

31. 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, or document of like intent or purpose, understandings, commitments, representations of any kind, whether oral or written, relating to the subject matter hereof or the Services to be provided hereunder. It is understood that additional or conflicting terms and conditions, if any, included in Customer's purchase order or similar document are for Customer's internal purposes only and any provisions contained therein shall have no effect whatsoever upon this Agreement or any Statement of Work. In the event that any provision in any Statement of Work 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.

32. 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.

33. Survival

All provisions of this Agreement, which by their nature should survive termination of this Agreement, will so survive.