

**ASAP MEDICAL SYSTEMS, INC.**

**REGIONAL DIRECTOR / DISTRICT MANAGER RESELLER AGREEMENT**

Please fill form out and fax to 1-509-665-9780

This agreement ("Agreement") is made by and between ASAP Medical Systems, Inc., Inc., a Washington corporation, with a principal place of business at 135 S. Worthen Street, Suite 300, Wenatchee, WA. 98801 ("ASAP") and "Regional Director" or "District Manager" (also referred to herein as "Contractor") as identified below, and is effective as of the date this Agreement is executed by ASAP (the "Effective Date"). This Agreement consists of this signature page, the Terms and Conditions, and the Exhibits A through E attached hereto and incorporated herein by this reference.

Contractor Name: \_\_\_\_\_, a

\_\_\_ Corporation

\_\_\_ Partnership, Limited Liability Company

\_\_\_ Sole Proprietorship

duly organized on \_\_\_\_\_ in the state of \_\_\_\_\_, in good standing and qualified to do business in the state of \_\_\_\_\_.

Name and address of Registered Agent in the state of \_\_\_\_\_:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Principal place of business: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Federal EIN  
or SSN: \_\_\_\_\_

If Contractor is a partnership, provide complete names, addresses and SSN/EIN for all partners (attach additional sheets as necessary):

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ASAP:

CONTRACTOR:

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

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

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

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

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

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

## **RECITALS**

WHEREAS, ASAP is in the business of providing certain professional services and online medical practice management, claims processing, and accounts receivable applications known as ASAPOnline (“ASAP Products and Services”), and wishes to expand the public's access to such products and services by appointing third parties to become its authorized Regional Directors and District Managers; and

WHEREAS, Contractor desires to become a certified Regional Director or District Manager, as applicable, in order to identify prospective customers that may be interested in ASAP's products and services and to solicit such potential customers on behalf of ASAP as a Reseller in accordance with the terms and conditions of this Agreement; and

WHEREAS, Contractor certifies under oath that they have medical related work experience, or that they will maintain personnel at all times that have medical related work experience; and

NOW, THEREFORE, in consideration of the mutual promises set forth below and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ASAP and Contractor agree as follows:

## **TERMS AND CONDITIONS**

### **1. Nature of Relationship.**

1.1 **Appointment.** Subject to the terms and conditions of this Agreement, ASAP hereby appoints Contractor as a Regional Director or District Manager, as applicable, in the territory (the “Territory”) set forth in Exhibit A to solicit and obtain orders from potential customers (“Subscribers”) for ASAP Products and Services, and to provide on-site and telephonic first tier customer support and first tier customer training, in accordance with Exhibit C. “ASAP Products and Services” shall mean ASAP's proprietary medical practice management and claims processing online applications, including upgrades and new releases thereto; and claims overload medical systems claims outsourcing services, described in more detail in Exhibit A.

1.2 **Exclusivity.** Subject to the provisions of Section 7.4 below, the Contractor has the exclusive right to market, sell and distribute version 1 of ASAP Products and Services in the Territory licensed by ASAP to Contractor. Version 1 Online Products and Services are developed to serve Physicians and Clinics. This Agreement does not include future versions developed for entities such as hospitals, skilled nursing facilities, home health agencies, or prisons. Contractor shall be paid commission for versions other than Version 1 products and services based on a one-time fee to be specified by a separate written agreement.

1.3 Independent Contractor. The Contractor's relationship with ASAP is that of an independent contractor, and nothing in this Agreement is intended to or should be construed to create a partnership, agency, joint venture, or employment relationship.

1.4 Prohibitions. Contractor shall not enter into any agreement, contract or arrangement with any government or government entity or with any other person, firm, corporation, entity or enterprise imposing any legal obligation or liability of any kind on ASAP. Without limiting the generality of the foregoing, Contractor shall not sign ASAP's name to any commercial paper, contract or other instrument and shall not contract any debt, or enter into any agreement, express or implied, binding ASAP in any respect.

1.5 Contractor's Employees. ASAP shall have no responsibility for Regional Director, District Manager, or their respective employees with respect to any state, federal or local unemployment insurance laws, social security laws, workers' compensation or industrial accident laws, or under any other laws or regulations which would or might impute any obligation or liability to ASAP by reason of any employment relationship.

1.6 Standard of Conduct. Contractor shall not commit any act that would reflect unfavorably upon ASAP or the ASAP Products and Services, or make any false or misleading representations or guarantees concerning ASAP or the ASAP Products and Services.

1.7 Identification. Contractor may identify itself as an ASAP Regional Director or District Manager, as applicable, solely in connection with performing its obligations under this Agreement, and shall otherwise identify itself as an independent business.

## 2. Regional Director's/District Manager's Duties.

2.1 Commercial Efforts. Contractor shall use commercially reasonable efforts to introduce, promote the sale of, solicit and obtain orders for, subject to acceptance by ASAP, the ASAP Products and Services.

2.2 Costs and Facilities. Contractor shall bear the entire cost and expense of conducting all of its activities under this Agreement, and shall maintain office space, facilities, and a competent, trained and motivated sales organization for the promotion and sale of ASAP Products and Services. ASAP shall maintain and operate [www.asapmedical.com](http://www.asapmedical.com), among other things, for Subscriber order processing, Customer Service, Customer Training, and Technical Support; and shall provide a toll-free number for order processing, and a toll-free number for technical support. All sales processed through [www.asapmedical.com](http://www.asapmedical.com) and the toll-free numbers, shall be tracked to accurately distribute compensation to Contractor, in accordance with Exhibit D. ASAP shall bear the cost of any technical support that results from a bug or malfunction within the online application. ASAP shall make an e-mail address, a web-site template and online contact information posted on [www.asapmedical.com](http://www.asapmedical.com), available for Contractor's use.

2.3 Subscriber Agreements. ASAP shall make the subscriber agreement (each a “Subscriber Agreement”), and purchase order form (each an “Order Form”), available on [www.asapmedical.com](http://www.asapmedical.com) for submission. However, Contractor shall obtain Subscriber’s signature on ASAP’s Subscriber Agreement, Order Form, and any other forms of agreement as ASAP may require, as amended by ASAP from time to time and make available to Contractor. All such agreements shall be between ASAP and Subscribers, and shall not reference Contractor in any way. Only ASAP may negotiate modifications to Subscriber Agreements, Order Forms and other forms of agreements. Contractor is required to promptly scan agreements with Subscriber signatures and e-mail to ASAP.

2.4 Marketing Materials. Contractor shall use marketing materials and literature developed by Contractor. Contractor shall not make representations or warranties about the ASAP Products and Services that are inconsistent with ASAP’s training program, materials and [www.asapmedical.com](http://www.asapmedical.com).

2.5 Records and Reporting. Contractor shall maintain accurate, complete and timely books and records related to its activities under this Agreement during the term of this Agreement and for a period of two (2) years following the termination or expiration of this Agreement for any reason. ASAP or its agents shall have the right to inspect all records maintained by Contractor and Regional Directors shall have the right to inspect all records maintained by District Managers in connection with this Agreement upon reasonable prior notice during the term of this Agreement and for a period of two (2) years following expiration or termination of this Agreement.

2.6 Supervision. Regional Directors shall be responsible for the conduct and supervision of the District Managers that are geographically designated within the Regional Director’s territory. Regional Directors shall verify and assure District Managers are following the terms of the Reseller Agreement. A Regional Director shall notify ASAP in writing within ten (10) days of any District Manager’s violation of said Reseller Agreement, along with Regional Director’s affirmative steps taken and planned to produce District Manager’s compliance. District Managers shall allow access to all business records for the Regional Director and ASAP or its agents to verify and assure compliance with the Reseller Agreement; and consent to participate in action plans developed by Regional Director and ASAP as affirmative steps to produce District Manager compliance if deemed necessary by Regional Director or ASAP.

2.7 Regional Director Functions. The function of the Regional Director is to conduct supervision of District Managers in accordance with this Agreement; in exchange for compensation as set forth herein. Optionally, the Regional Director may perform District Manager functions and service Subscribers directly in accordance with this Agreement.

2.8 District Manager Functions. The function of the District Manager is to introduce, promote the sale of, solicit and obtain orders for ASAP Products and Services; to provide first tier customer support and first tier customer training; and to report to Regional Director in accordance with this Agreement.

2.9 On-line Sales Referrals. When ASAP receives or processes an order for Products and Services on [www.asapmedical.com](http://www.asapmedical.com), the Subscriber will be issued an order number and the

Contractor will be notified of the new Subscriber in their territory by e-mail. Prior to being eligible for commission from the sale to such subscriber, Contractor shall provide service to Subscriber and e-mail ASAP with the order number of the Subscriber to confirm contact with Subscriber.

2.11 Hours of Operation. Contractor shall maintain business operational hours between 8:00a.m to 5:00 p.m., time zone specific to the territory, Monday through Friday, excluding standard holidays.

### 3. **Certification Program**

3.1 Scope. Upon Contractor's payment of the training fees set forth in Exhibit B, ASAP agrees to provide the sales, technical and administrative training described in Exhibit B (the "Certification Program") for Contractor.

3.2 Training. Certification Program training will take place in accordance with ASAP's standard policies and procedures.

### 4. Customer Support, Customer Training and Technical Support.

4.1 First Tier Customer Support. Contractor shall be solely responsible for providing all customer support directly to Subscribers and Subscribers' end users in accordance with Exhibit C ("First Tier Support").

4.2 First Tier Customer Training. Contractor shall be solely responsible for providing optional customer training directly to Subscribers and Subscribers' end users in accordance with Exhibit C ("First Tier Training") at the expense of the Subscriber in accordance with the Customer Order Form.

4.3 Second Tier Customer Training. During the term of this Agreement, ASAP will provide optional Customer Training ("Second Tier Customer Training") directly to Subscribers through a training call center, or on-site training at the expense of the Subscriber in accordance with Exhibit C and the Customer Order Form.

4.4 Technical Support. ASAP shall provide Technical Support directly to Subscribers and Subscribers' end users through a technical support call center, at the expense of the Subscriber in accordance with Exhibit C.

### 5. **Orders and Acceptance.**

5.1 Orders. All orders for ASAP Products and Services must be on the ASAP's standard Order Form posted on [www.asapmedical.com](http://www.asapmedical.com). Contractor shall promptly forward all Order Forms for ASAP Products and Services to ASAP for consideration and acceptance. Upon request by ASAP, Contractor will supply information regarding a potential Subscriber's credit worthiness.

5.2 Acceptance of Orders. All Order Forms and modifications thereto are subject to acceptance, rejection or revocation by ASAP in its sole discretion. No Order Form solicited by Contractor for fulfillment by ASAP shall be binding upon ASAP until accepted by ASAP. The terms and conditions of the Subscriber Agreement shall be the controlling terms for each Order Form accepted by ASAP. Inconsistent or additional provisions in any other orders submitted by Regional Directors, District Managers and/or Subscribers shall not apply.

5.3 Refusal of Orders. ASAP may refuse any Order or other business originating with Contractor for any reason, including, without limitation, a potential Subscriber's lack of credit worthiness, or any other reason which, in ASAP's sole discretion, constitutes reasonable grounds for such refusal.

5.4 Terms of Sale. All Order Forms for ASAP Products and Services must be for ASAP's then-current prices and upon the terms established by ASAP in the Subscriber Agreement. ASAP reserves the right to modify the prices for the ASAP Products and Services, terms of the Subscriber Agreement or any other license agreement for the ASAP Products and Services. Contractor shall not accept Order Forms in ASAP's name or make price quotations or promises concerning the ASAP Products and Services that are inconsistent with ASAP's price list or other terms and conditions without ASAP's prior written consent.

## 6. **Availability and Billing**

6.1 Additions and Deletions from ASAP Products and Services. ASAP may, in its sole discretion, add or delete components of the ASAP Products and Services upon thirty (30) days prior notice to Contractor; provided, however, that ASAP shall make available those ASAP Products and Services which are the subject of Order Forms which ASAP has already accepted.

6.2 Availability. ASAP shall make all ASAP Products and Services for which it has accepted Order Forms available to Subscribers and will bill Subscribers directly. ASAP will attempt to make the ASAP Products and Services available upon the commencement date specified in the applicable Order Form, but shall not be responsible for any delays in doing so. ASAP may withhold making the ASAP Products and Services available where a Subscriber's account is delinquent, and such action shall not be deemed to be a breach of this Agreement.

6.3 Invoices. All invoice payments for Order Forms accepted by ASAP shall be made directly to ASAP by Subscriber.

6.4 Collections. Contractor shall have no authority to collect funds or accept payment of any sort for Order Forms accepted by ASAP unless so requested by ASAP. Contractor shall promptly remit any payments that it receives from Subscribers to ASAP.

7. **Compensation and Payment.**

7.1 **Commission Rate.** Provided that Contractor is not in default of any of its obligations under this Agreement, ASAP will pay commissions to Contractor in accordance with Exhibit D.

7.2 **Modifications.** Upon thirty (30) days prior written notice to Contractor, ASAP may, in its sole discretion, modify the types of products and services offered to Subscribers and those changes may alter existing or add new Contractor commissions, and the accrual date or the time for payment of commissions. ASAP may not decrease the 25%, 10%, or the 15% commission structure as described in Exhibit D, as long as this agreement is in effect.

7.3 **No Other Compensation.** Contractor sole compensation for performing its obligations under this Agreement shall be the commissions payable pursuant to Exhibit D. Contractor shall have no right to receive any other compensation from ASAP or to receive reimbursement of its expenses incurred in performing under this Agreement.

7.4 **Referrals/Multi-Location Subscribers.** In the event that a Contractor has a multi-location Subscriber that has at least one location located within the Contractor's territory, and the Subscriber has one or more additional locations in another Contractor's territory, exceptions to the standard compensation structure exist:

7.4.1 **Regional Director Referral.** A Regional Director may at his/her sole discretion refer a Subscriber's locations lying outside the Regional Director's territory to the territorial Regional Director, so long as the territorial Regional Director and referring Regional Director mutually agree. In the event the said Regional Directors mutually agree, the territorial Regional Director shall pay the referring Regional Director a referral fee as negotiated between the said Regional Directors. When a referral has been made the territorial Regional Director and District Manager shall provide the required customer support and optional training, and ASAP shall pay the territorial Regional Director and District Manager compensation in accordance with Exhibit D.

7.4.2 **Regional Director Non-Referral.** In the event the Regional Director elects not make a referral as described in 7.4.1, the Regional Director shall provide the required customer support and optional training to the Subscriber's locations lying outside of the Regional Director's territory. ASAP shall pay the Subscriber's Regional Director and/or Subscriber's District Manager regular compensation in accordance with Exhibit D. The territorial Regional Director and territorial District Manager shall not be compensated for those such locations within their territorial boundaries.

7.4.3 **District Manager Referral.** A District Manager with a multi-location, cross-territorial Subscriber may, with the approval of his/her Regional Director elect to (a) provide the required customer support and optional training to any or all of Subscriber's locations lying in other territories and receive commission according to Exhibit D, or (b) refer the out of territory location(s) to the District Manager of such territory, so long as the territorial Regional Director and Regional Director of the referring District Manager mutually agree. In the event the said Regional Directors mutually agree, the territorial Regional Director shall

pay the referring Regional Director a referral fee as negotiated between the said Regional Directors. When a referral has been made the territorial Regional Director and District Manager shall provide the required customer support and optional training, and ASAP shall pay the territorial Regional Director and District Manager compensation in accordance with **Exhibit D**.

Regional Director may acquire Subscribers and may provide the required technical support and optional training in lieu of having the territorial District Manager provide services for compensation.

7.5 In the event that more than one Contractor refers a Subscriber to ASAP, or there is a dispute or uncertainty with respect to which Regional Director and/or District Manager shall receive compensation, then ASAP shall determine, in its sole discretion, the Regional Director and District Manager who shall provide the required customer support and optional training and correspondingly be compensated. Contractor agrees to be bound by such determination.

7.6 Taxes. Contractor shall be responsible for payment of all taxes due as a result of commissions received from ASAP and referral fees received from other Contractors. ASAP shall not be responsible for any federal or state tax withholding or reporting requirements other than filing an IRS 1099 Form to report commissions paid annually to Contractor.

## 8. **Proprietary Rights**.

8.1 Ownership. Contractor acknowledges and agrees that the ASAP retains all worldwide right, title and interest, including, without limitation, all copyrights, patents, trade secrets, trademarks, service marks, and all other intellectual and proprietary rights of any kind as may exist now or hereafter come into existence, (“Intellectual Property Rights”) in and to the ASAP Products and ASAP Software.

8.2 Assignment. To the extent that Contractor makes any improvements, modifications, suggestions, updates, upgrades or enhancements (“Improvements”) to the ASAP Products or Services, Contractor shall promptly disclose such Improvements to ASAP. Contractor hereby assigns all worldwide right, title and interest, including Intellectual Property Rights, in and to any and all Improvements to ASAP, and agrees to take all measures requested by ASAP to perfect and enforce ASAP’s ownership of such Improvements.

8.3 License Grant. ASAP hereby grants to Contractor a royalty-free, non-exclusive license for the number of its employees identified in the Certification Program to access via the Internet, use, display and transmission of the ASAP Products and Services solely in connection with performing its obligations under this Agreement. This limited license may not be transferred and sublicenses may not be granted without the prior written consent of ASAP. Contractor shall not, and shall not permit third parties to copy, modify, create derivative works, sublicense, transfer, rent, reverse engineer, de-compile, disassemble, or otherwise attempt to derive the source code for the ASAP Products and Services.

## 9. Confidentiality.

9.1 Non-Disclosure. Contractor may be exposed to certain information concerning the ASAP Products and Services, and business operations of ASAP that is confidential and proprietary to ASAP (“Confidential Information”). Confidential Information shall include, but is not limited to, Intellectual Property such as ASAP’s ASAPOnline products, including its object code and source code, patents, trademarks, service marks, copyrights, software, systems, and all other materials that are designated as confidential, or which under the circumstances surrounding their disclosure can reasonably be deemed to be Confidential Information, any of its customers, the prices it obtains or has obtained from the sale of, or at which it sells or has sold, its products or services, its tax records, personnel history, accounting procedures, promotions, and the like, or any other information concerning the business of ASAP, its manner of operation, its plans, processes, or other data, or any matter deemed confidential pursuant to the Uniform Trade Secrets Act, Chapter 19.108 RCW (cumulatively and nonexclusively referred to as “Trade Secrets”), without regard to whether all of the above-stated matters will be deemed confidential, material, or important.

9.2 Non-Disclosure and Non-Use. Contractor agrees that during and after the term of this Agreement it shall not in any manner, either directly or indirectly, except as necessary in the ordinary course of performance of Contractor’s duties under this Agreement, divulge, disclose or communicate to any person, firm, corporation, or other entity in any manner whatsoever, any information concerning any matters affecting or relating to the business of ASAP, including, but not limited to Trade Secrets, Intellectual Property and other Confidential Information. Contractor may disclose Confidential Information to those of its employees who need to know such information, provided that such employees have executed confidentiality agreements that protect the Confidential Information. All Confidential Information shall remain the property of ASAP, and Contractor shall not acquire any interest therein.

9.3 Injunctive Relief. The parties expressly agree that as between them, ASAP’s Confidential Information is important, material, and confidential and gravely affects the effective and successful conduct of the business of ASAP, and ASAP’s goodwill, and that any breach of the terms of this Section 9 shall be a material breach resulting in irreparable injury to ASAP. In addition to any other remedy provided by law, should Contractor breach this Agreement, ASAP shall be entitled to an immediate injunction by any competent court to enjoin and restrain the unauthorized disclosure of trade secrets or property rights of ASAP, without the necessity of posting a bond.

## 10. Marketing Obligations.

10.1 Product Literature. ASAP will provide Contractor with product information on [www.asapmedical.com](http://www.asapmedical.com) and Contractor may prepare printed quantities of marketing materials, at Contractor’s expense, utilizing said information and artwork on [www.asapmedical.com](http://www.asapmedical.com). Contractor shall not make representations or warranties about the ASAP Products and Services that are inconsistent with ASAP’s training program, materials and [www.asapmedical.com](http://www.asapmedical.com).

10.2 Marketing Efforts. Contractor's marketing efforts will be of high quality, in good taste and will preserve the professional image and reputation of ASAP and the ASAP Products and Services. All worldwide right, title and interest, including, without limitation, Intellectual Property Rights, in and to all marketing materials related to the ASAP Products and Services, whether developed individually by ASAP shall remain under the ownership of ASAP, and Contractor shall not acquire any interest therein.

10.3 Trademark License. ASAP hereby grants to Contractor during the term of this Agreement, a non-exclusive, non-transferable, royalty free license, without the right to grant sublicenses, to use, copy, publicly display, and transmit the ASAP trademarks, service marks, trade names, logos and other source identifiers (collectively, the "ASAP Trademarks"), as set forth in Exhibit E. This license is made solely for the purpose of marketing the ASAP Products and Services, including, without limitation, in and on (a) all advertising materials for other products and services that Contractor promotes in conjunction with ASAP Products and Services, whether in written or electronic form (excluding banner advertising); (b) the home page of Contractor's web site; and (c) the splash or copyright page for other products and services that Contractor promotes in conjunction with ASAP Products and Services.

10.4 Trademark Usage. Contractor shall comply with ASAP's trademark usage guidelines set forth in Exhibit E, as amended by ASAP from time to time. ASAP shall remain the sole and exclusive owner of the ASAP Trademarks, and Contractor shall not do anything inconsistent with such ownership during and after the term of this Agreement. Contractor acknowledges and agrees that its use of the ASAP Trademarks shall inure to the benefit and be on behalf of ASAP.

## 11. Contractor's Warranties.

11.1 Compliance. Contractor represents and warrants to ASAP that it shall comply with all applicable laws and regulations and that it will maintain all required permits for performing its obligations under this Agreement.

11.2 Authority. Contractor represents and warrants to ASAP that it has the full power and authority to enter into this Agreement and that its performance under this Agreement shall not violate the terms of any agreement between Regional Director/District Manager (as applicable) and third parties. Contractor shall provide evidence of authority to enter this Agreement upon request by ASAP.

11.3 Performance. Contractor represents and warrants to ASAP that it will perform its obligations under this Agreement in a professional manner and in accordance with industry standards. If Contractor fails to follow said Agreement then this Agreement becomes null and void by written notice from ASAP.

12. Disclaimer. ASAP WARRANTS THE ASAP PRODUCTS AND SERVICES TO SUBSCRIBERS AND END USERS ONLY PURSUANT TO THE TERMS AND CONDITIONS OF THE APPLICABLE SUBSCRIBER AGREEMENT, ORDER FORM, AND END USER LICENSE AGREEMENTS INCLUDED WITH THE ASAP PRODUCTS AND SERVICES. ASAP MAKES NO, AND HEREBY DISCLAIMS, ALL

WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, TO CONTRACTOR WITH RESPECT TO THIS AGREEMENT, THE ASAP PRODUCTS AND SERVICES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, TITLE AND NON-INFRINGEMENT OF THIRD PARTIES' RIGHTS. Contractor shall have no right or authority to alter, enlarge or limit the representations and warranties supplied by ASAP to Subscribers.

### 13. **Term and Termination**

13.1 **Term.** This Agreement shall commence on the Effective Date and continue for a period of one (1) year ("Initial Term").

13.2 **Performance Evaluation.** At any time during this Agreement or any renewal or extension thereof, ASAP may review Contractor's performance under this Agreement, including but not limited to compliance with the Agreement, compliance with ASAP's policies and procedures, subscriber satisfaction and production history. Not less than thirty (30) days prior to the expiration of the Initial term or any extension or renewal thereof, ASAP will provide Contractor with notice of the results of such review. In ASAP's sole discretion, based on such review, ASAP may (a) renew for a period of one (1) year this Agreement under continuing terms and conditions (each a "Renewal Term"); (b) renew this Agreement for a period of (1) year subject to performance standards identified by ASAP; or (c) notwithstanding the termination provisions set forth in Section 13.4 below, terminate this Agreement effective the end of the then current term. Termination under this Section shall only be effective at the end of any current term, shall be at the discretion of ASAP following any performance review, and shall not require breach of a material term of this Agreement.

13.3 **Conditions.** Contractor shall:

13.3.1. Maintain current insurance and bonding in accordance with paragraph 15;

13.3.2. Pay annual Training and Certification Fees and attend annual training seminars as described in Exhibit B;

13.3.3. Provide First Tier Customer Support and First Tier Customer Training of the most beneficial character and quality as described in Exhibit C.

**13.4 Termination.** Either party may terminate this Agreement during the Initial Term or a Renewal Term where the other party fails to comply with any material term of this Agreement within thirty (30) days notice from the non-breaching party specifying the noncompliance.

13.5 **Effect of Termination.** Upon expiration or termination of this Agreement, (a) Contractor shall promptly return all ASAP personal property, including but not limited to Confidential Information, and copies thereof, to ASAP and certify such return in writing, (b) Contractor shall cease holding itself out as a ASAP Regional Director or District Manager,

and (c) all license grants to Contractor for the ASAP Trademarks and ASAP Products and Services shall terminate.

13.6 Survival. The terms of this Agreement that, by their nature, require performance following the termination or expiration of this Agreement shall survive the termination or expiration of this Agreement.

14. **Limitation of Liability**.

**IN NO EVENT SHALL ASAP BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION OR WHETHER ASAP HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. In no event shall ASAP's aggregate liability under this Agreement exceed an amount equal to the commissions paid to Contractor by ASAP during the six (6) month period prior to the event allegedly giving rise to the claim.**

15. **Insurance/Bond**.

Contractor shall maintain: (a) worker's compensation in sufficient amounts to comply with all laws and regulations; (b) commercial general liability insurance with coverage in the amount of one million dollars (\$1,000,000.00) per occurrence, against claims for bodily injury, death, property damage, including loss of income, and all other harm caused by or occurring in connection with Contractor's business operations; (c) errors, acts, omissions and/or misrepresentations insurance in the amount of three hundred thousand dollars (\$300,000.00) per occurrence for District Manager and one million dollars (\$1,000,000.00) per occurrence for Regional Director; and (d) a performance bond in the amount of five thousand dollars (\$5,000.00) for District Manager and fifteen thousand dollars (\$15,000.00) for Regional Director. Insurance policies shall have ASAP as primary, noncontributory named insured. Contractor shall deliver to ASAP certificates of such insurance, bond and other evidence (such as copies of the policies) of required insurance and bonding prior to commencement of business activities.

16. **Assignment**.

ASAP may assign this Agreement without prior written notice to Contractor in connection with the sale of all or substantially all of its assets or outstanding capital stock, or pursuant to a merger, consolidation or reorganization. Contractor acknowledges and agrees that ASAP has entered into this Agreement because of the reputation, business standing and goodwill already enjoyed by Contractor. Accordingly, Contractor agrees that it shall not, directly or indirectly, sell, transfer, assign, pledge, encumber, or otherwise dispose of this Agreement, and shall not enter into any form of sub-sales agreement concerning any of its obligations under this Agreement, without obtaining, in each instance, the prior written consent of ASAP.

17. **Non-Solicitation and Non-Competition.**

17.1 **Non-Solicitation of Business.** During the term of this Agreement and for two (2) years following the termination or expiration of this Agreement, Contractor shall not, directly or indirectly, separately or in association with others, interfere with, impair, disrupt, or damage ASAP's relationship with Subscribers or potential customers identified by ASAP, its employees, agents, Regional Directors or District Managers by soliciting them for the purpose of impairing, diverting or taking away business from ASAP or encouraging Subscribers to terminate their business relationship with ASAP.

17.2 **Non-Solicitation of Employees.** During the term of this Agreement and for two (2) years following the termination or expiration of this Agreement, Contractor shall not, directly or indirectly, separately or in association with others, interfere with, impair, disrupt, or damage ASAP's business by soliciting or attempting to hire any of ASAP's employees or encouraging or causing them to discontinue their employment with ASAP.

17.3 **Non-Competition.** In consideration of the Confidential Information to which Contractor will have access in performance of this Agreement and the mutual agreements contained herein, during the term of this Agreement and for a period of one (1) year following its termination, neither Contractor nor its officers and directors shall engage anywhere, as sales or technical Regional Directors, District Manager or agents, in the sale of products and services that, in ASAP's sole determination, compete with the ASAP Products and Services.

18. **Indemnity/Hold Harmless.**

Contractor agrees to indemnify and hold ASAP, its successors and assigns harmless from any and all liability, loss, damage, charge, claim, demand, suit, judgment, including claims for attorney's fees or costs, from any Subscriber or other third party, arising out of Contractor's performance of this Agreement which results in a violation of the provisions of Sections 1.4, 1.5, 1.6, 7.6, 11.1, 11.2, 11.3, 12, and 15.

19. **Miscellaneous.**

19.1 **Arbitration.** The parties agree to submit any dispute relating solely to commissions payable under this Agreement to binding arbitration. Such arbitration will be conducted in Wenatchee, Washington, U.S.A., under the commercial arbitration rules of the American Arbitration Association. The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court having jurisdiction thereof. The parties waive their rights to have claims or disputes related to commissions tried to a judge or jury.

19.2 **Governing Law; Jurisdiction and Venue.** The terms of this Agreement shall be governed by and construed in accordance with the laws of State of Washington without regard to its choice of law principles. Except for claims subject to arbitration pursuant to this Agreement, the exclusive jurisdiction and venue for all claims or proceedings shall lie in the Superior Court in Chelan County, Washington, U.S.A or the federal district court for the Eastern District of Washington.

19.3 Attorney's Fees. The prevailing party in any action or proceeding, including arbitration, arising out of or related to this Agreement shall be entitled to recover its reasonable costs and attorneys' fees, including costs of appeal.

19.4 Notices. Notices to be given pursuant to this Agreement must be in writing to the addresses on the signature page of this Agreement, and will be deemed to have been received: (a) on the day of delivery, if in person, (b) one day after deposit with an overnight courier, or (c) five (5) days after mailing if sent by first class mail.

19.5 Headings. The headings in this Agreement are used for convenience of reference and shall not be deemed to modify or affect the interpretation of this Agreement.

19.6 Severability. If any provision of this Agreement is held to be invalid or unenforceable, (a) that provision shall be amended to achieve as nearly as possible the same economic effect as the original, if possible, and (b) the remainder of the provisions shall remain in full force and effect.

19.7 Waiver. The failure of either party to require performance of any provision of this Agreement shall not be construed as a waiver of any provision or right. Neither the course of conduct between parties nor trade practice shall act to modify any provision thereof.

19.8 Force Majeure. Neither party shall be liable for failure or delay in performance under this Agreement if such delay or failure is caused by reasons beyond the control of the non-performing party. Any delay resulting therefrom will extend or excuse performance, in whole or in part, as may be reasonable.

19.9 Amendment; Entire Agreement. This Agreement shall not be amended except by written amendment signed by authorized representatives of both parties hereto. This Agreement, together with the Exhibits, contains the entire Agreement between the parties with respect to its subject matter, and supersedes all prior oral or written agreements, commitments or understandings between the parties.

19.10 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors, and assigns.

**EXHIBIT A**

**ASAP Medical Systems, Inc. Products and Territory**

**1. ASAP Medical Systems, Inc. Products Version 1.**

A. ASAPOnline Hosted Service Package Subscribers access, display, enter, edit, print and transmit medical practice management, claims processing and accounts receivable information via the Internet.

**2. Territory.**

In consideration of payment by Contractor in the amount of \$ \_\_\_\_\_, which amount represents the Initial Term Training and Certification Fee, ASAP hereby acknowledges receipt of such payment and approves Contractor as the  Regional Director,  District Manager of the following described geographical territory where Contractor may conduct activities pursuant to this Agreement:

## EXHIBIT B

### Certification Program

*ASAP Medical Systems, Inc. Certified ASAPOnline™ Administrator*

- Demonstrated knowledge of behind-the-scenes ASAPOnline™ technology. Possesses the ability to provide, deploy and support product implementations as well as perform ongoing support.

*ASAP Medical Systems, Inc. Certified ASAPOnline™ Salesperson.*

- Demonstrated knowledge of ASAPOnline™ features and benefits, and knows how to effectively design and present ASAPOnline™ solutions.

1. Initial Term Training and Certification fee for a Regional Director is \$40,000.00, and for a District Manager is \$15,000.00. Contractor's territory and the Initial Term Training and Certification fee are described in **Exhibit A**. The Initial Term Training and Certification fees include a 3-day Salesperson training seminar for one person and a 1-day Administrator training seminar for one person, each seminar to be held at a location designated by ASAP. Additionally, ASAP shall maintain and provide a toll free help line and staff to train and support Contractors. Additional Salesperson training seminars are available per person for an additional \$1,995.00 and additional Administrator training seminars are available per person for an additional \$650.00. Travel, lodging, meals and incidental expenses are the responsibility of the Contractor.

2. Renewal Term Training and Certification fees are \$2,500.00 per District Territory, and \$7,500.00 per Regional Territory, and include one 3-day Salesperson training seminar for one person and a 1-day Administrator training seminar for one person, each seminar to be held at a location designated by ASAP. Additional Salesperson training seminars are available for an additional \$1,995.00 per person and additional Administrator training seminars are available for an additional \$650.00 per person. Travel, lodging, meals and incidental expenses are the responsibility of the Contractor.

A. License and Certification privileges include:

- i. Membership in [www.asapmedical.com](http://www.asapmedical.com) on-line sales referral system;
- ii. ASAPOnline access, e-mail and web-site template; and
- iii. Free 30-day evaluation licenses for customers for ASAPOnline in a hosted environment for evaluation by potential Subscribers.

B. Contractor, is required to maintain Certified ASAPOnline Salespeople and Certified ASAPOnline Administrators (see note 1) on staff based upon the following volumes:

<b>Number of Active Customers (regardless of # of seats/customer)</b>	<b># of Required Certified ASAPOnline Salespeople</b>	<b># of Required Certified ASAPOnline Administrators</b>
1-25	1	1
26-50	2	2
51-75	3	3
76-100	4	4
101-150	6	6

*Note 1: One person may hold multiple certifications*

## EXHIBIT C

### Support, Training and Order Processing

#### A. **First Tier Customer Support and First Tier Customer Training**

**1. Minimum Terms and Conditions of Support Agreement.** Contractor agrees to provide First Tier Customer Support (“First Tier Support”) directly to Subscribers and Subscribers’ end users. First Tier Support shall include, but not be limited to, software setup, configuration, and operational issues, including Clearinghouse set-up. Contractor agrees to provide First Tier Customer Training (“First Tier Customer Training”) to Subscribers and Subscribers’ end users, at the Subscribers expense in accordance with the Customer Order Form and Subscribers Agreement. Unless expressly agreed, ASAP shall have no responsibility or liability for providing First Tier Support and First Tier Training directly to Subscribers and Subscribers’ end users.

**2. Affirmative Steps.** In the event that three (3) or more Subscribers file written complaints against a Contractor for failure to provide adequate First Tier Support or First Tier Training to Subscribers and/or Subscribers’ end users, ASAP shall implement Affirmative Steps, described as follows, to help the Contractor comply with performance requirements. To comply with ASAP’s Affirmative Steps for improvement, Contractor shall be required to pay \$1,995.00 tuition and attend an additional 3-day training seminar, held at a location designated by ASAP, with travel, lodging, meals and incidental expenses being the responsibility of the Contractor. Either a District Manager or a Regional Director may be subject to the foregoing requirements. In addition, ASAP may deem a Regional Director to be out of compliance with performance requirements when such complaints are received for any District Manager under their supervision, in which case both the Regional Director and the District Manager shall be required to pay for and to attend the additional training seminar.

Three additional (3) written complaints filed against the same Contractor will result in termination of the Agreement pursuant to Section 13.4 of the Agreement. In the event the non-complying party is a District Manager, ASAP shall not at that time give the Regional Director a termination notice. However, to avoid termination, the Regional Director shall be required to adequately supervise the replacement District Manager, providing training and support so as to prevent complaints being filed against the replacement District Manager. In the event three (3) written complaints are filed within the Initial Term of any replacement District Manager, the Regional Director shall be terminated in accordance with paragraph 13.4 of the Agreement.

**B. Second Tier Customer Training**

**1. Second Tier Customer Training by ASAP.** ASAP agrees to provide Second Tier Customer Training directly to Subscribers and Subscribers' end users on-site, and through a toll-free training call center at the expense of the Subscriber, in accordance with the Customer Order Form. Second Tier Customer Training includes training, setup, configuration, and operational issues, including Clearinghouse set-up. When ASAP receives a Second Tier Customer Training call a task number shall be assigned to the call and the Subscriber will be provided with training.

**C. Technical Support**

ASAP shall provide Technical Support directly to Subscribers and Subscribers' end users through a technical support call center for a \$70.00 fee per issue, except internal office networking issues are charged at a rate of \$120.00 per hour, which are paid by the Subscribers. In the event that the problem has occurred due to a bug or malfunction within ASAP products, ASAP shall provide technical support at no charge to the Subscribers and Subscribers' end users.

Technical Support excludes First Tier Support, First Tier Training, Second Tier Customer Training, and follow-up on payment of HCFA 1500 and UB-92 Insurance Claims. Technical Support includes editing and modifying data base information; reversing purged or deleted information; dealing with technical Clearinghouse issues to verify status of remittance advice and clarification of statements; contacting Insurance companies to obtain status reports of claims; and setting system administrator rights and permissions. In accordance with the Health Insurance Portability and Accountability Act (HIPAA), the Subscriber is required to send a facsimile to ASAP Medical Systems, Inc. containing an authorized signature permitting ASAP to access the Subscriber's data base information.

**D. Contractor's Designated Contacts.** Contractor shall appoint the following Designated Contact or Contacts to receive e-mail correspondence and notifications from ASAP.

<u>Designated Contact</u>	<u>Designated Contact</u>
Name: _____	Name: _____
Title: _____	Title: _____
Address: _____	Address: _____
Telephone: _____ Fax: _____	Telephone: _____ Fax: _____
E-mail: _____	E-mail: _____

**E. Support Hours.**

Second Tier Customer Training and Technical Support are available to Subscribers during the support hours listed below. Second Tier Customer Training and Technical Support are not available on ASAP holidays (generally consistent with United States federal holidays). Support may also be unavailable due to unforeseen emergencies such as weather or power outages. ASAP uses voicemail as a backup when support technicians are assisting other customers or are not available by phone or email. ASAP will make reasonable efforts to respond to voicemails left during business hours within twenty-four (24) business hours after receipt of the voicemail message.

Support Hours :

Location:	ASAP Help Desk
Hours:	6:00 a.m.-6:00 p.m. PST, M-F
Telephone:	toll free: 888-458-2727
E-mail:	support@asapmedical.com

**ASAP reserves the right to change its support hours and contact information with prior notice to Contractor.**

## **EXHIBIT D**

### **Commissions**

#### **1. Commissions.**

During the term of this Agreement, and provided that Contractor is not in default of any obligations under this Agreement, Contractor shall receive commissions as set forth in the commission percentage table below (the "Commission Table") on Collected Revenue for ASAP Products and Services sold by Contractor or through the ASAP on-line sales referral system and in accordance with Subscriber's then-existing prices and terms. The receipt and acceptance by ASAP of a Subscriber Agreement will entitle Contractor to receive commissions on that transaction in accordance with the Agreement and this Exhibit D. Contractor shall not be entitled to receive commissions on the following non-exclusive list of products and services: ASAP data upgrades, data conversions, equipment, hardware, networking labor/materials/cabling, professional consulting, problem statement reports; off-site training seminars, on-site training seminars/set-ups conducted by ASAP; ASAP toll free training call center, address verification, clearinghouse fees, clearinghouse reports and technical support billed to Subscribers. Contractor is entitled to receive commissions on ASAPOnline monthly and annual Subscriber fees, Package 1 set-up fee, Package 2 set-up fee, Package 3 set-up fee, Package 4 set-up fee, on-site set-up/on-site training conducted by Contractor, and claims outsourcing.

For purposes of this Agreement, "Collected Revenue" shall mean the amount of revenue actually collected by ASAP from Subscribers for the monthly/annual usage charges such Subscribers pay to ASAP Medical Systems, Inc. for ASAP Products, as described in Exhibit A. To be eligible for a commission on any particular transaction, Contractor must have generated such transaction in accordance with the terms and conditions of the Agreement and have obtained the applicable Subscriber's commitment to pay ASAP's then-current monthly usage fees and to use the ASAP Products in accordance with ASAP's then-current terms, unless otherwise agreed by ASAP in writing. Contractor shall be entitled to commissions on transactions generated through the ASAP on-line referral and sales program, upon performance of and compliance with the terms and conditions of paragraph 2.10 of this Agreement. Any promotional or other credits granted by ASAP to such Subscribers shall be deducted from monthly usage charges prior to the calculation of commissions hereunder. The amount of commissions hereunder will be derived by applying the commission percentages set forth in the Commission Table below to Collected Revenue.

ASAP agrees to make commission payments to Contractor on either a monthly or quarterly basis, as mutually agreed by the parties in writing (the "Commission Period"), and will use commercially reasonable efforts to make commission payments to Contractor approximately forty-five (45) days from the end of the applicable Commission Period. ASAP reserves the right to set-off from commissions any amount due to ASAP by Contractor, including but not limited to License and Certification Fees.

## **2. Commission Percentages.**

Subject to Section 1 above, ASAP will pay to Contractor commissions in accordance with the following Commission Table. The commission percentages are valid only on ASAP Medical Systems, Inc. products normally offered to ASAP customers. Commissions on non-standard ASAP products and/or ASAP Products provided under a special pricing and/or promotion arrangement will be determined by ASAP on a case-by-case basis. Commission will be based on the following:

### **Regional Director**

- 1. 25% of ASAPOnline sales serviced by Regional Director.**
- 2. 10% of ASAPOnline sales serviced by District Manager.**
- 3. 1.5% Outsourcing Commission per month serviced by Regional Director.**
- 4. .5% Outsourcing Commission per month serviced by District Manager.**
- 5. 25% of ASAPOnline set-up fees serviced by Regional Director.**
- 6. 10% of ASAPOnline set-up fees serviced by District Manager.**
- 7. 25% of Initial Term License and Certification Fee of District Managers, whose territory sale was generated by Regional Director.**
- 8. 25% of Training conducted by Regional Director.**
- 9. 10% of Training conducted by District Manager.**

### **District Manager**

- 1. 15% of ASAPOnline sales serviced by District Manager.**
- 2. .5% Outsourcing Commission per month, serviced by District Manager.**
- 3. 15% of ASAPOnline set-up fees serviced by District Manager.**
- 4. 15% of Training conducted by District Manager.**

**EXHIBIT E**  
**ASAP Medical Systems, Inc. Trademarks and Usage Guidelines**

**A. Trademarks.**

For purposes of these trademark usage guidelines, the ASAP service marks, trade names, trademarks and logos (collectively, the “ASAP Trademarks”) include the following:

ASAP Medical Systems, Inc. <sup>TM</sup>

**www.asapmedical.com; www.asapmedical.net**

Claims Overload Medical Systems <sup>TM</sup>

**www.claimsoverloadsystems.com; www.claimsoverloadsystems.net**

ASAPOnline <sup>TM</sup>

**B. Trademark Usage Guidelines.**

These guidelines apply to the ASAP Trademarks and any additions, deletions and changes as may be communicated to Contractor by ASAP from time to time.

1. Contractor may use the ASAP Trademarks for the term of the Contractor agreement (the “Agreement”) by and between Contractor and ASAP, and in accordance with the terms and conditions of the Agreement and these Trademark Usage Guidelines. ASAP may amend these guidelines from time to time and will post such amendments on the ASAP web site or will otherwise provide such amendments to Contractor in writing.
2. Contractor may only use the ASAP Trademarks in the format set forth above or on ASAP’s website, or as otherwise provided by ASAP. Contractor must maintain the consistency of the visual design of the ASAP Trademarks, and may not alter the ASAP Trademarks without the prior written consent of ASAP.
3. Contractor must use the ASAP Trademarks in a manner that distinguishes them from the surrounding text and they must appear in a distinctive manner. Contractor may not incorporate the ASAP Trademarks into its trade name, the name of a division, a product name or Contractor’s trademarks, as applicable, or those of any third party. The ASAP Trademarks should not be placed so physically close to another mark, name or other background material so as to create the appearance that the ASAP trademarks are part of another mark, name, or that the ASAP Trademarks include text or designs that are not part of the ASAP Trademarks.
4. ASAP will provide the ASAP Trademarks to Contractor with either a ® designation, “<sup>TM</sup>” designation or “4” designation. Contractor must always display the ASAP Trademarks with the designation provided by ASAP. At a minimum, the designation should be used at least once in each piece of printed matter, computer screen, etc. and preferably the first time the

ASAP Trademark appears. Because the ® designation may only be used for federally registered trademarks, do not use the ® designation with the ASAP Trademarks unless ASAP has indicated that it is the appropriate designation for any particular ASAP trademark. In addition, do not place the “TM” or “SM” in a circle. The circle is reserved for the ® designation. The trademark designation should be in a raised (superscript) position following the ASAP Trademarks, in uppercase letters.

5. The ASAP Trademarks are proper adjectives and should, whenever possible, be followed by the common descriptive name of the ASAP Products. This should be done at least the first time the ASAP trademarks appear in each piece of printed matter, computer screen, etc. The preferred descriptive name for the ASAP Products is: ASAPOnline™

6. The following trademark notice must appear wherever and whenever Contractor uses the ASAP Trademarks:

ASAP Medical Systems, Inc.<sup>4</sup>, ASAPOnline™ and the ASAP Medical Systems, Inc. logo are either the trademarks and service marks of ASAP Medical Systems, Inc. Corporation, protected in the United States and other countries, and may not be reproduced, copied or modified in whole or part without the prior written permission of ASAP Medical Systems, Inc. Corporation. ASAP Medical Systems, Inc. Corporation is a trade name owned by ASAP Medical Systems, Inc. Corporation, 135 S. Worthen Street, Suite 300, Wenatchee, WA 98801.

7. Contractor shall provide copies of all of its uses of the ASAP Trademarks to ASAP. Contractor acknowledges and agrees that ASAP reserves the right to require Contractor to conform its use of the ASAP Trademarks to these guidelines, or as ASAP may otherwise designate in its discretion.

8. The ASAP Trademarks identify the source of ASAP’s goods and services and embody the reputation and good will of ASAP Medical Systems, Inc. ASAP has worked diligently to establish and promote the ASAP Trademarks, and intends to take all necessary steps to prevent the misuse of its trademarks. Do not use the ASAP Trademarks in an undignified manner that may compromise the reputation of ASAP or the ASAP Trademarks.

9. Contractor acknowledges and agrees that its use of the ASAP Trademarks will inure to the benefit and be on behalf of ASAP. Contractor will not obtain any rights in the ASAP Trademarks beyond those expressly granted to Contractor in the Agreement and under these Guidelines. Contractor agrees not to contest the rights of ASAP in any ASAP Trademark, and to promptly notify ASAP in the event that Contractor learns of any infringement upon the rights of ASAP in any of the ASAP Trademarks by any third party. ASAP reserves the sole right to take any action with respect to the infringement of any of the ASAP Trademarks.

10. Contractor agree to cease any and all further use of the ASAP Trademarks in any manner whatsoever upon termination of the Agreement.