

SUBSCRIBER AGREEMENT

THIS SUBSCRIBER AGREEMENT (the "Agreement") between ASAP Medical Systems, Inc. ("ASAP") and _____ ("Subscriber") is made by and between the parties as of the date of the last signature below (the "Effective Date").

1. **GENERAL**

In consideration of payment of the fees set forth on each order (each an "Order Form"), ASAP will provide to Subscriber the online medical practice management and accounts receivable applications known as ASAPOnline, and all updates, upgrades and new releases thereto (the "ASAP Product"), associated documentation ("Documentation") and such other professional and support services ("Services") listed on the Order Form. As indicated on the Order Form, ASAP will make the ASAP Product available as a hosted application residing on ASAP's servers (a "Hosted Service Package"), or will provide ASAP proprietary software in object code form (the "ASAP Software") on a CD (a "Private License Package").

2. **TERM**

2.1 *Term.* The term for the ASAP Product and Services will be as set forth on the Order Form (the "Initial Term"), with automatic renewal periods equal to the Initial Term (each a "Renewal Term"), unless either party notifies the other of an intention not to renew at least thirty (30) days prior to the expiration of the then-current term.

2.2 *Termination.* Either party may terminate this Agreement if the other party breaches any material term or condition of this Agreement and fails to cure such breach within thirty (30) days of receipt of written notice specifying the non-conformity, except in the case of Subscriber's failure to pay fees, which must be cured within five (5) days of Subscriber's receipt of notice.

2.3 *Effect of Termination.* Upon expiration or termination of this Agreement, Subscriber shall (a) cease using the ASAP Product, (b) if applicable, remove the ASAP Software, and all copies thereof, from its servers and workstations, and (c) promptly return all CDs containing the ASAP Software, Documentation, and all copies thereof, and certify such removal and return in writing. The terms and conditions 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.

3. **PAYMENT AND PAYMENT TERMS**

3.1 *Payment.* Subscriber will pay fees to ASAP as specified in the applicable Order Form.

3.2 *Payment Terms.* All recurring fees for the ASAP Product and other Services shall be (a) due on the first of each month preceding the month of service or (b) due on the first day of each calendar year preceding the year of service. Recurring fees will be charged on the date due to the checking account with Check by Web or the credit card as listed on the Order Form unless other arrangements are made in advance. Fees for all other professional services shall be due thirty (30) days from date of invoice and will be charged to the checking account with Check by Web or the credit card, as listed on the applicable Order Form unless other arrangements are made in writing in advance.

3.3 *Late Payments.* Payments not received within thirty (30) days of the date of invoice will accrue interest at a rate of 1% per month, or the highest rate allowed by law, whichever is lower.

3.4 *Fee Adjustments.* Upon forty-five (45) days written notice, ASAP may change or increase the prices it charges Subscriber for the ASAP Product or Services at any time and for any term after the Initial Term. Such changes will be effective the first term, whether annual or monthly, beginning not less than forty-five (45) days from ASAP's notice to Subscriber. In the event Subscriber does not consent to such fee adjustments, Subscriber may terminate this Agreement by providing written notice to ASAP thirty (30) days prior to commencement of the term in which the changes are effective.

3.5 *Taxes.* Subscriber shall be responsible for payment of all taxes levied with respect to the ASAP Product and Services, including but not limited to income, sales or use tax, and excepting taxes levied with respect to ASAP's income.

3.6 *Audit Rights.* During the term of this Agreement and for one year thereafter, ASAP may audit Subscriber's records related to this Agreement and its LAN or WAN or other network in order to verify Subscriber's compliance with this Agreement. ASAP will conduct such audit upon reasonable notice and during regular business

hours. ASAP will pay the costs of such audits unless Subscriber is found not to be in compliance with the Agreement,

in which case Subscriber shall reimburse ASAP for the cost of the audit, together with any damages accruing to ASAP under this Agreement, copyright law, or otherwise.

4. **LICENSE GRANT.**

4.1 *By ASAP.* ASAP hereby grants to Subscriber a nonexclusive, non-transferable license (referred to herein as “End User License Agreement” or “EULA”), without the right to grant sublicenses, during the term of this Agreement, to use the ASAP Product, in object code form only, together with the Documentation, for the number of providers, locations, and types of facilities for which Subscriber has paid fees (each a type of “End User”), with an unlimited number of access rights (each a “log-in”), solely for the purpose of using the ASAP Product.

Subscriber has a Hosted Service Package. Subscriber’s license includes the right to access, display, enter, edit, print and transmit the ASAP Product via the Internet, in accordance with the applicable Documentation and EULA (a “Private Client License”).

Subscriber has a Private License Package. Subscriber’s license includes the right to (a) install the server components of the ASAP Product from ASAP Software on its servers in accordance with the applicable Documentation and EULA (a “Private Server License”), and (b) copy the ASAP Software and Subscriber data solely for back-up and archival purposes.

4.2 *Number of End Users.* The ASAP Product may be accessed and used by End Users for whom Subscriber has paid the applicable fee, with an unlimited number of log-ins. Subscriber may change the identity of log-ins, provided that the total number of End Users shall not exceed the number of providers, locations and types of facilities purchased by Subscriber as identified on an Order Form.

4.3 *End User Agreements.* Each End User shall agree to and be bound by the terms and conditions of the “EULA” accompanying each component of the ASAP Product. Subscriber shall not modify the terms of the applicable EULA without ASAP’s prior written approval.

4.4 *Copying and Proprietary Notices.* Subscriber shall reproduce ASAP’s proprietary notices on each copy it makes of the ASAP Product, and shall not modify, remove or obscure such notices.

4.5 *Restrictions.* Subscriber shall not, and shall not permit third parties, to (a) copy, modify, or create derivative works of the ASAP Product, except as expressly provided herein, (b) de-compile, decrypt, disassemble or otherwise attempt to derive the source code of the ASAP Product, or (c) sublicense, sell, rent, lease, make available as a hosted application or otherwise distribute the ASAP Product to third parties.

4.6 *Injunctive Relief.* Subscriber acknowledges and agrees that monetary damages would not be a sufficient remedy for a breach of Subscriber’s obligations under this section 4 and that ASAP shall be entitled, without waiving any other rights or remedies provided by this Agreement or by law, to injunctive or equitable relief as may be appropriate, without the necessity of posting a bond.

5. **ORDER AND DELIVERY PROCEDURES**

5.1 *Placement of Orders.* Subscriber shall order the ASAP Product and Services via an Order Form transmitted to ASAP in writing or online followed with a signed copy transmitted to ASAP. Follow-up transmission to ASAP shall be by regular mail, fax or, preferably, scanned and emailed to ASAP. All Order Forms are subject to acceptance by ASAP.

5.2 *Controlling Term.* The terms and conditions of this Agreement are the controlling terms for each Order Form accepted by ASAP. Inconsistent or additional provisions in any other orders submitted by Subscriber, regardless if accepted by ASAP, shall not apply.

5.3 *Delivery and Set-up.*

5.3.1 The ASAP “Private License Package” shall be in CD format, delivered, installed and set-up by ASAP or a third party, as specified in the Order Form and in accordance with ASAP’s then-current policies, procedures and fees. ASAP will make Subscriber updates available via Internet download.

5.3.2 The ASAP “Hosted Service Package” shall be accessible through the Internet with a Subscriber-selected and purchased third-party web browser such as Microsoft Internet Explorer (version 5.5 and greater) or Netscape (version 4.8 and greater). Each Subscriber is given access rights by ASAP to, among other things, delete and add providers and facilities (End Users) through Subscriber administration within ASAPOnline without the assistance of ASAP, and ASAP shall charge Subscriber for the number of End Users the Subscriber administers during each month.

6. **PROPRIETARY RIGHTS.**

6.1 *Ownership.* All worldwide right, title and interest, including patents, copyrights, trademarks, trade names, service marks, trade secrets and all other proprietary rights, known or unknown, existing now or arising in the future (“Intellectual Property Rights”) in and to the ASAP Product and Documentation shall remain in ASAP, and Subscriber shall not obtain any interest, except as expressly granted in this Agreement.

6.2 *Confidentiality.* Subscriber agrees to retain in confidence all information that ASAP identifies as being proprietary or confidential or which under the circumstances surrounding its disclosure ought in good faith to be treated as confidential or proprietary, including, without limitation, the ASAP Product and its source code and object code, and the terms and conditions of this Agreement, (“Confidential Information”). Subscriber may only use Confidential Information for purposes of this Agreement and for no other reason. Subscriber may only disclose Confidential Information to those of its employees who need to know such information, provided that Subscriber identify Confidential Information as such to its employees. .

6.3 *Injunctive Relief.* Subscriber acknowledges and agrees that monetary damages would not be a sufficient remedy for a breach of Subscriber’s obligations under this section 6 and that ASAP shall be entitled, without waiving any other rights or remedies provided by this Agreement or by law, to injunctive or equitable relief as may be appropriate, without the necessity of posting a bond.

7. **CUSTOMER SUPPORT, CUSTOMER TRAINING AND TECHNICAL SUPPORT**

7.1 *Customer Support.* In accordance with the applicable Order Form, Subscriber may, at no extra cost, receive First Tier Customer Support from the designated ASAP third party Regional Director and/or District Manager, as applicable.

7.2 *Customer Training.*

7.2.1 A **Private Client License Subscriber** or a designee thereof may purchase optional training for a fee as specified on the applicable Order Form, in accordance with ASAP’s then-current policies, procedures and fees.

7.2.2 A **Private Server License Subscriber** shall receive on-site customer training included in their set-up fee and shall receive continuing Customer Support directly from the designated ASAP third party Regional Director and/or District Manager, as applicable; and may purchase optional training for a fees as specified on the applicable Order Form, in accordance with ASAP’s then-current policies, procedures and fees.

7.3 *Technical Support.* ASAP shall provide Technical Support directly to Subscribers and Subscribers’ end users through a technical support call center for a charge per issue, in accordance with the Order Form and ASAP’s then-current policies, procedures and fees. Technical support services are described in the Order Form. In the event that the problem has occurred due to a bug or malfunction within ASAP’s Products, ASAP shall provide technical support at no charge to the Subscribers and Subscribers’ end users.

8. **SUBSCRIBER’S WARRANTIES.**

8.1 Subscriber represents and warrants to ASAP that (a) it has the legal right and authority to enter into this Agreement and that this Agreement will not violate the terms and conditions of any Agreement between Subscriber and third parties, and (b) Subscriber and End Users will not use the ASAP Product in violation of any applicable laws or regulations, or to interfere with the use of the ASAP Products by ASAP’s existing or potential customers.

9. **ASAP’S WARANTIES**

9.1 ASAP represents and warrants to the Private License Package Subscriber that for a period of ninety (90) days from the date of delivery, the media on which the ASAP Product is furnished, if any, will be free from defects in material and workmanship; and for both the Hosted Service Package and Private License Package Subscribers ASAP represents and warrants for a period of ninety (90) days from the date of delivery or first availability to Subscriber and End Users, the ASAP Product will perform substantially in accordance with the Documentation. These warranties

shall not apply to any failure in performance related to accident, abuse, misapplication, or access of data files by any program not provided by ASAP. Subscriber's sole remedy and ASAP's sole obligation for breach of the foregoing warranties shall be the replacement of the ASAP Software or repair of the ASAP Product, as applicable, provided that Subscriber gives ASAP or the third party providing First Tier Customer Support written notice of the non-compliance within the applicable warranty period.

10. **DISCLAIMERS**

10.1 *Disclaimer.* EXCEPT FOR THE FOREGOING WARRANTIES, ASAP DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL EXPRESS, IMPLIED AND STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE WITH RESPECT TO THE ASAP SOFTWARE, ASAP PRODUCT, SERVICES AND THIS AGREEMENT.

10.2 *Internet Service.* THE FLOW OF DATA TO OR FROM THE ASAP NETWORK AND OTHER PORTIONS OF THE INTERNET ARE CONTROLLED BY THIRD PARTIES, AND ASAP SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR DISRUPTIONS IN SUBSCRIBER'S AND END USERS' INTERNET ACCESS TO THE ASAP PRODUCT. ASAP DOES NOT WARRANT THAT SUBSCRIBER'S AND END USERS' ACCESS TO THE ASAP PRODUCT WILL BE UNINTERRUPTED OR ERROR-FREE.

10.3 *Subscriber's Equipment.* Subscriber shall be responsible for providing all hardware and other equipment necessary for using the ASAP Software and ASAP Product, unless otherwise agreed to in writing. ASAP SHALL NOT BE RESPONSIBLE FOR AND ASSUMES NO LIABILITY FOR ANY DAMAGE TO SUCH HARDWARE AND EQUIPMENT RESULTING FROM SUBSCRIBER'S AND END USERS' USE OF THE ASAP PRODUCT.

11. **LIMITATION OF LIABILITY**

ASAP SHALL NOT BE LIABLE TO SUBSCRIBER, END USERS, OR ANY THIRD PARTY CLAIMING THROUGH THEM, FOR ANY INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR INDIRECT 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 total aggregate liability for damages to Subscriber arising out of this Agreement exceed an amount equal to the fees paid by monthly Subscriber to ASAP during the one (1) month prior to the event allegedly giving rise to the claim or 1/12 of the fees paid by Subscribers who pay annually.

12. **MISCELLANEOUS PROVISIONS.**

12.1 *Marketing.* Subscriber agrees that during the term of this Agreement ASAP may publicly refer to Subscriber, orally and in writing, as a Subscriber of ASAP. Any other reference to Subscriber by ASAP requires the written consent of Subscriber.

12.2 *Force Majeure.* Except for payment of fees, neither party shall be liable for failure or delay in performance of any of its obligations under this Agreement if such failure or delay is beyond the control of and not caused by the negligence of the non-performing party.

12.3 *Severability; Waiver.* If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, that provision shall be deemed to be amended to provide the same economic result as intended by the parties if possible and if not, the provision shall be deemed stricken, and all other provisions of this Agreement shall remain in full force and effect. Failure by either party to enforce any provision of this Agreement shall not be deemed to be a waiver of future enforcement of that or any other provision of this Agreement.

12.4 *Relationship of the Parties.* Neither this Agreement, nor any terms or conditions contained herein shall be construed as creating an employment relationship, a partnership, an agency relationship or a joint venture between the parties or as granting a franchise.

12.5 *Assignment.* ASAP may assign this Agreement or any of its obligations under this Agreement in its sole discretion. Subscriber shall not assign or sublicense this Agreement, or any of its rights or obligations hereunder, in whole or in part, whether by written agreement, operation of law or in any other manner, without ASAP's prior consent, which shall not be unreasonably withheld.

12.6 *Government Restricted Rights.* The ASAP Software is "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement ("DFAR") and its successors.

12.7 *Arbitration.* Except for claims involving proprietary rights and confidentiality obligations, the parties agree to submit all disputes arising 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 all such claims and disputes governed by this section tried to a judge or jury.

12.8 *Governing Law; Jurisdiction.* 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 state or federal courts, as applicable, located in or with jurisdiction over Chelan County, Washington, U.S.A.

12.9 *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.

12.10 *Notices.* Notices to be given pursuant to this Agreement must be in writing to the addresses on the Order Form, 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.

12.11 *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.

12.12 *Amendment; Entire Agreement.* This Agreement may not be amended except in a writing signed by the authorized representatives of each party. This Agreement, together with any Order Forms, Private Service License or Private Client License, Support and Maintenance provisions supplied by ASAP to Subscriber, and EULAs, contains the entire agreement between the parties with respect to its subject matter, and supersedes all prior, contemporaneous, oral and written understandings between the parties.

12.13 *Binding Effect.* Subject to the provisions of Section 12.5, this Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors, and assigns.

13. **EXECUTION/TRANSMISSION.** ASAP has made this Agreement, as well as the Order Form and EULA, available for completion online for the convenience of the Subscriber. Each document is subject to review and acceptance by ASAP. Each document completed must be printed out by Subscriber, signed and transmitted to ASAP. Subscriber may scan the signed document and e-mail it to ASAP or the original document may be mailed or faxed to ASAP.

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

AGREED TO AND ACCEPTED BY:

ASAP MEDICAL SYSTEMS, INC.

SUBSCRIBER:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____