

Astym Therapy Service Agreement

Name, professional designations _____ (“Client”)

Personal Address _____

Date of Agreement _____ (“Effective Date”)

Performance Dynamics[®], Inc., an Indiana corporation, located at 400 North High Street, Suite 320, Muncie, Indiana 47305 (“PDI”) is the institution that exclusively manages and trains clinicians in the treatment known as Astym[®] therapy. PDI and Client agree as follows:

ARTICLE I SERVICES

1.1 Thank you for signing up to become an Astym certified provider. PDI will provide you certification training, and also offer you various support programs (“Services”):

- **Training:** PDI may schedule training courses at various locations within the USA, and/or may offer virtual certification courses. Current schedules are posted to the PDI website. You will be responsible for the lodging, food and travel expenses to attend training, and shall complete all training as required by the PDI instructors. No video or audio recording of any clinical instruction is permitted. Prior to performing Astym therapy, you must be certified by passing all testing and requirements of the certification course and any remedial work required by PDI. In granting certification, PDI grants permission to perform Astym treatment in the areas of application and in the manner set forth in the training course to be applied as determined by your clinical judgment. PDI does not promote, suggest or approve of any other applications, nor does it recommend a clinician’s scope of practice, which is to be determined solely by you in accordance with all applicable standards, rules and regulations. In order to maintain certification and be allowed to perform Astym treatment, you must be under an active Service Agreement. You shall not assist or instruct anyone in the use the Astym therapy or the Astym instrumentation. Certification shall not be assignable or transferable under any circumstances.
- **Support Services.** You will be provided access to the on-line Provider Resource Center (PRC), containing clinical support materials, such as presentations, video instruction, charts, tips, checklists, research, contraindications, indications, condition specific guidelines and other materials. In addition, clinical phone support, research support and certain aspects of practice support may also be available. The PRC also contains marketing support materials and practice support materials, including professionally prepared marketing materials, suggested correspondence, strategies and forms. You shall keep your passwords for these features strictly confidential and shall not permit any unauthorized use, and you shall abide by all of the terms and conditions of the site. Your support staff may be granted access to the marketing and practice support materials, provided that the staff member signs the required Confidentiality Agreement to gain access to the PRC, and utilizes the materials as PDI allows. You must notify PDI in writing of all the locations where you will be offering Astym therapy, and PDI may add those locations to the Astym therapy Find a Provider Listing.
- **Instruments.** You will be provided a Set of Three Instruments (Evaluator, Localizer and Isolator) when you are trained to utilize in your provision in Astym therapy. In the event you would like additional finger instruments, there may be an additional charge. You agree not to sell or transfer any Instrument, make or have made any facsimiles of any Instrument, nor use any facsimiles or substitutes for the Astym instrumentation in the performance of Astym therapy or any element thereof. PDI warrants that each Instrument shall be free of any material defects in workmanship or materials under normal use and service for a period of ninety (90) days from your receipt of an Instrument and agrees to replace at its cost any Instrument which does not meet this warranty. This warranty shall not apply to Instruments which are lost or which are damaged due to neglect, misuse or abuse, as determined by PDI. For each Instrument that is lost, you shall pay to PDI a replacement, and upon receipt of the damaged instrument and payment of the replacement, PDI shall replace the Instrument. PDI may change the replacement charges. Subject to Sections 2.3 and 2.4 herein, this section contains the sole and exclusive warranties made by PDI with regard to Instruments as well as the sole and exclusive remedy for breach of the warranty. PDI HEREBY DISCLAIMS AND CLIENT HEREBY WAIVES ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PDI FURTHER DISCLAIMS ANY

LIABILITY, AND CLIENT HEREBY WAIVES ANY CLAIMS FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR SPECIAL DAMAGES.

- 1.2 Trademark License. PDI hereby grants you a limited, nonexclusive, nontransferable license to use PDI's trademarks, service marks, trade names, logos, and the goodwill associated therewith (the "Marks") solely in connection with the Astym therapy. The term of the license shall continue so long as the Agreement is in effect. You shall use the Marks only to identify Astym therapy and in a form and manner as allowed by PDI, and use the marks in every instance where you refer to or identify Astym therapy. Your use of the Marks shall comply with all applicable statutes, regulations, rules and accepted standards of care. All rights, title and interest in and to the Marks, and any state, federal or foreign registrations and applications for such Mark, including all goodwill associated with the Marks, shall remain vested in PDI at all times. All use of the Marks by the Client shall inure to the benefit of and be on behalf of PDI. You have not and will not (1) act in a manner inconsistent with such ownership or (2) challenge the validity of the Marks. Upon termination of the Agreement, you shall immediately discontinue all use of the Marks and any term confusingly similar thereof.
- 1.3 Support Documents. As part of the Services, PDI shall provide you with access to instructive clinical materials which are only allowed to be used only by Astym-certified clinicians; PDI may also provide marketing and practice support materials (collectively referred to as the "Documentation"). PDI grants you a limited, nonexclusive right to use the Documentation, and you agree to not copy, distribute, alter, revise, transfer, reformat or sell any clinical Documentation. You shall immediately cease use of and return all Documentation to PDI at the termination of this Agreement.
- 1.4 Term and Compensation: The "Term" of this Agreement begins on the Effective Date and continues for three (3) years; it shall be automatically extended for subsequent two (2) year periods unless either party notifies the other that it does not wish to extend the Agreement at least ninety (90) days prior to the expiration of the current Term. For the consideration provided under this Agreement, you shall pay to PDI a one-time payment in the amount of Four Thousand Nine Hundred and Ninety Five and 00/100 Dollars (\$4,995.00). This one-time payment shall be paid upon registration for training. No further payment shall be required to maintain your Astym certification. In the event class registration is canceled within 14 days of class, an administrative fee of \$250 shall be due. Any amounts due under this Agreement and not paid within thirty (30) days of the due date shall accrue interest at one and one-half percent (1.5%) per month or portion thereof until paid.
- 1.5 Rights and Licenses. The duplication, representation or use of any of PDI's Intellectual Property shall done only as permitted under this Agreement. Except as specifically set forth herein, nothing in this Agreement shall be deemed as granting to Client any rights in or licenses to any intellectual property owned or licensed to PDI, its parents, affiliates or subsidiaries, including, but not limited to, any copyrights, trade secrets, trademarks, patents or other intellectual property. You agree that the Astym therapy process is a trade secret of PDI, and you will shall take all actions, and refrain from all actions, as necessary to preserve its trade secret status, and comply with all policies and procedures of PDI pertaining to trade secret issues. You agree to only use Astym therapy, or any of the elements of Astym therapy, pursuant to this Agreement or another agreement with PDI.
- 1.6 Professional Judgment. Determining when and how to use Astym therapy will be done in your sole professional judgment. The education, services and Instruments are designed merely to assist you in the performance of your professional activities, and is not intended to replace your professional skill and/or judgment.

ARTICLE II WARRANTIES AND INDEMNIFICATION

- 2.1 Client Warranties. You hereby represent and warrant that as of the Effective Date and for the Term of this Agreement: (a) You are authorized to enter into this Agreement; (b) You possess all licenses, permits and regulatory approvals necessary in carrying out its business; (c) You will deliver care only within your scope of practice and are, and will continue to be, properly licensed to perform physical and/or occupational therapy and/or certified to perform athletic training services; (d) By entering this Agreement, you are not violating any agreements or understandings, or any federal, state or local laws or regulations or any professional rules or

standards; (e) You shall be solely responsible for complying with any and all federal, state and local laws, rules and regulations concerning use and disclosure of privileged data in your practice; (f) You have not relied upon any statement or claim of PDI its agents or employees in its decision to enter into this Agreement; (g) You shall have full general and professional liability insurance coverage for you and your business to fully insure your liability. In any event, the amount of such insurance coverage shall be no less than \$ 1,000,000 per occurrence. Upon request, you shall provide PDI with a certificate of insurance and such other evidence of insurance; (h) You shall comply, in all material respects, with all applicable federal, state and local laws, regulations, rules and standards and all professional standards of care and ethics; (i) You and anyone in your service shall not perform Astym therapy unless they are trained and certified by PDI and are covered by an active Service Agreement at the time they are providing Astym therapy. (j) As of the Effective Date of this Agreement, you do not anticipate that the gross revenue derived as a result of this Agreement during the first year will exceed twenty percent (20%) of your total gross revenue.

2.2 PDI Warranties. PDI hereby represents and warrants that: (a) It is a corporation in good standing, and is authorized to enter into this Agreement; (b) It possesses all necessary licenses, permits and regulatory approvals necessary in carrying out its business and is authorized to provide the Services and to grant the licenses set forth herein; and (c) By entering this Agreement, it is not violating any agreements or understandings, or any federal, state or local laws or regulations or any professional rules or standards.

2.3 No Other Warranties. PDI and Client each acknowledge and agree that the warranties set forth in Sections 1.5, 2.1 and 2.2 shall be the sole warranties under this Agreement and that there are no other warranties. PDI and Client each hereby disclaims any and all other warranties, whether express or implied.

2.4 Indemnification and Liability.

(a) PDI. PDI shall indemnify, defend and hold Client, its owners, employees, officers and directors harmless from and against any and all claims, demands, suits, actions, damages, costs, expenses and attorneys' fees which arise from any breach of warranties by PDI and/or any breach of this Agreement by PDI. PDI shall not be liable for any incidental, consequential, special, punitive or exemplary damages arising from or relating to this Agreement, including but not limited to any lost profits, loss of reputation, or lost business opportunity. PDI's entire liability to Client for any loss or damage whatsoever shall be limited to the amount of the fees paid by Client to PDI pursuant to this Agreement.

(b) Client. Client shall indemnify, defend and hold PDI, its owners, employees, officers and directors, harmless from and against any and all claims, demands, suits, actions, damages, costs, expenses and attorneys' fees which arise from: (a) any breach of warranties by the Client; (b) any breach of this Agreement by Client and/or breach of the Acknowledgement signed by its clinicians; (c) Client's provision of healthcare or athletic training services; and/or (d) any modifications made to the Instruments or Astym therapy.

ARTICLE III CONFIDENTIALITY

3.1 PDI Obligations. PDI shall keep confidential and shall not use except for the purposes set forth in this Agreement, any information relating to Client's business which is confidential and is clearly designated and described in writing to be confidential.

3.2 Client Obligations. You, and your staff, employees and representatives shall keep confidential and shall not use or disclose, either directly or indirectly, except for the purpose of treating patients, any Confidential Information of PDI. Such Confidential Information includes, but is not limited to the following, in whatever form or medium, tangible or intangible: Astym® treatment; the Astym® treatment methods, processes, procedures, applications and each element thereof; PDI's business methods, operations and procedures; any services provided by PDI in connection with Astym treatment; any education or program provided by PDI; the materials, methods and information associated with the training, instruction and education that PDI offers, including, without limitation: manuals, presentations, testing, video instruction, charts, tips, checklists, research, contraindications, indications, condition specific guidelines and other materials; the performance and application of Astym treatment; the

instruments, research, development and background of Astym treatment; business methods, operations and procedures of PDI; marketing plans, financial information, future plans and potential strategies of PDI; information related to service and product development, research, engineering, inventions, manufacturing and merchandising; The ReBuild Program® methods, processes, procedures, applications and each element thereof; any services provided by PDI in connection with the ReBuild Program; any education, training or instruction provided by the PDI in connection with the ReBuild Program; the instruments, research, development and background of the ReBuild Program; the Astym Analyst™ software program, all predecessor or successor programs to the Astym Analyst and all information contained in or related to the Astym Analyst or its predecessor and successor programs; the Therapy View outcomes system, all successor programs to the Therapy View system, and all information contained in or related to the Therapy View system or its successor programs; any software, code or computer programming utilized by PDI and not readily available to the public; pricing and customer information; audiovisual materials; and information related to service and product development, research, engineering, inventions, manufacturing and merchandising. The parties agree that the Confidential Information is the sole property of PDI and has independent economic value to PDI. You agree that PDI has taken reasonable steps to preserve and safeguard the secrecy of the Confidential Information. You shall notify your staff, employees and representatives of their obligations under this paragraph and shall use all reasonable efforts to ensure their compliance; you shall not teach, advise or instruct others in any aspect of Astym therapy or instrument assisted soft tissue mobilization. All creations, work, modifications or improvements performed, conceived of or put into practice by you pertaining to any Confidential Information of PDI shall be the sole and exclusive property of PDI. All such creations, work, modifications and improvements shall be Confidential Information.

- 3.3 Injunctive Relief. Either Client or PDI shall have the right, in addition to other remedies which may be available, to obtain injunctive relief enjoining any breach or attempted breach of the obligations in this Article III, it being acknowledged that legal remedies are inadequate. The parties agree that PDI may obtain such an injunction without bond.
- 3.4 Compliance. The parties agree to abide by all federal, state and local laws pertaining to privileged data with regard to patient information and records.

ARTICLE IV TERMINATION

- 4.1 Default. This Agreement may be terminated prior to its expiration upon the occurrence of any of the following which remains uncured for thirty (30) days after written notice thereof from the non-defaulting party. (a) PDI or Client fails to comply with each and every provision in this Agreement or in any Exhibit attached hereto; (b) PDI or Client enters bankruptcy, becomes insolvent, is unable to meet its obligations, or enters receivership; (c) Client or PDI ceases to do business; (d) Client performs Astym therapy, or utilizes or discloses any of PDI's proprietary information, Instruments, Documentation or Trademarks without the express permission of PDI; or (e) Client violates Article III herein, and in such case, no cure period shall apply, and this Agreement may be terminated upon the written election of PDI.
- 4.2 Effect of Termination. Upon the termination of this Agreement for any reason, you shall immediately discontinue use of: (a) Astym therapy and all elements thereof; (b) the Documentation; (c) the Provider Resource Center of the Astym website, (d) reports or functionality of the Astym Analyst™; (e) any licenses hereunder or intellectual property of PDI; (f) all Confidential Information as defined herein; (g) Astym Instruments; and (h) all other materials pertaining to Astym therapy. These termination provisions shall extend to all of your staff and representatives. In addition, upon termination of this Agreement all sums due PDI shall become immediately due and payable, and you shall immediately return to PDI all Astym Instruments, Documentation, and any other reports or materials provided in connection with the Services. In the event you are no longer Astym-certified, then, upon the election of PDI, that shall be considered a termination under this section. A clinician utilizing Astym instruments or Documentation, who is not trained in Astym therapy by PDI and permitted to do so under this Agreement, shall constitute service mark and trade mark infringement.

ARTICLE V GENERAL

- 5.1 Taxes and Waiver. Each party shall be solely responsible and shall hold the other harmless from and against any and all taxes of any nature which it may incur in carrying out its obligations under this Agreement. The failure of either party to insist in any one or more instances upon the strict performance of any term or provision of this Agreement by the other party shall not be construed as a waiver or relinquishment for the future of any such term or provision, which shall remain in full force and effect. Any waiver or relinquishment of any term or provision must be in writing and signed by the parties and shall be effective only to the extent specifically set forth in that writing. No delay or failure to exercise or any partial exercise of any right, power or remedy accruing to either party due to any breach or default by the other shall impair any such right, power or remedy, nor shall it be construed as a waiver of any breach or default, or an acquiescence therein, or of any similar breach or default occurring thereafter; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default which may occur.
- 5.2 Force Majeure and Notices. Excluding any payment obligations, neither party hereto shall be responsible for delays or failures in performance resulting from acts beyond the reasonable control of such party despite its diligent effort; provided that if such delay or failure in performance shall continue for more than thirty (30) days, the other party shall be free to terminate this Agreement upon written notice. All notices shall be given to the addresses in this Agreement or an updated address given in prior written notice to the other party; any notice under this Agreement shall be in writing and shall be given when placed in the U.S. Mail and sent by registered or certified mail, postage prepaid, return receipt requested. Communications to Client under this Agreement may be in electronic form.
- 5.3 Entire Agreement and Interpretation. This Agreement contains the entire and sole understanding between the parties regarding the subject matter hereof and supersedes all prior oral and written understandings between the parties which are merged herein. Notwithstanding the foregoing, any court order or agreement in the settlement of a lawsuit shall continue in full force and effect. The provisions of this Agreement may not be altered, amended or waived except by a writing signed by the parties. All obligations of Client under this Agreement and its attached Exhibit are cumulative and shall be interpreted to avoid inconsistency. The headings used herein are for convenience only and shall not be used in the interpretation of this Agreement. This Agreement shall be deemed to have been drafted jointly by the parties, and no inference or interpretation against any party shall be made by virtue of such party allegedly having been the draftsman of this Agreement. If this Agreement is being executed in two (2) counterparts, each shall be deemed an original.
- 5.4 Incorporation and Governing Law. All exhibits and addendums are hereby incorporated by reference into and made a part of this Agreement. This Agreement shall be deemed to have been entered into at Muncie, Indiana upon execution by PDI and shall be governed by and construed in accordance with the laws of the State of Indiana without regard to the conflict of laws provisions thereof. Any and all disputes arising out of or relating to this Agreement or Astym therapy shall be brought only in the courts of appropriate jurisdiction in Delaware County, Indiana or the Federal District Court for the Southern District of Indiana. The parties hereto irrevocably consent to jurisdiction and venue in such courts for purposes of this Agreement only.
- 5.5 Application and Signature. This Agreement shall be binding upon and shall inure to the benefit of the parties, and their successors. This Agreement may be signed in multiple counterparts, each of which is deemed to be an original. Signatures to the Agreement delivered by facsimile, digital image or electronically are agreed, for all purposes, to be valid and binding, with or without proof of the original signature. Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.
- 5.6 Assignment. PDI shall be free to assign its rights and obligations hereunder; provided, however, no such assignment shall operate to relieve the assignee of its obligations hereunder. Client's rights and obligations hereunder are personal to it and Client shall not assign its rights or delegate its obligations under this Agreement without the prior express, written consent of PDI.

- 5.7 Independent Status. The parties hereto, in the performance of this Agreement, shall be acting in their individual capacities as independent contractors and not as agents, employees, partners (as part of a joint venture or otherwise) or associates of one another. The employees of one shall not be deemed to be the employees or agents of the other party for any purpose whatsoever. Neither party shall be liable for any representations made by the other with respect to third parties.
- 5.8 Further Assurances. The parties agree to execute such further documents and to give such further undertakings and to perform such further acts or deeds as may be necessary to carry out the provisions of this Agreement in accordance with their true intentions.
- 5.9 Survival. The terms of Sections 1.2, 1.5 1.6, Articles II and III, 4.2, and Article V shall survive the termination of this Agreement for any reason.
- 5.10 Severability. All of the terms of this Agreement are completely severable. If any term is unenforceable, it shall be severed, construed or reformed to be enforceable to the fullest extent allowable. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement shall remain in full force and effect.
- 5.11 Third Party Beneficiaries. Each party intends that this Agreement shall not benefit, or create any right or cause of action in or on behalf of any person or entity other than the parties hereto and their valid assigns.

IN WITNESS WHEREOF, PDI and Client have executed this Agreement as of the Effective Date.

PERFORMANCE DYNAMICS, Inc.

By: _____


Amy L. White, General Counsel

"CLIENT"

Signed: _____

Printed