

PRISM PERSONAL PERFORMANCE MAPPING SYSTEM
CORPORATE LICENCE AND TECHNICAL SUPPORT AGREEMENT

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PRISM PERSONAL PERFORMANCE MAPPING SYSTEM CORPORATE LICENCE AND TECHNICAL SUPPORT AGREEMENT

THIS AGREEMENT is made on the acceptance date specified above

RECITALS

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| <p>(a) The Center for Applied Neuroscience (the Licensor) which is the owner of the System which is now being marketed by the Licensor under the name 'The PRISM Personal Performance Mapping System' (also known as the Team Strengths Inventory), which includes: 'PRISM Pro Select', 'PRISM YP', 'PRISM Prismatic' and 'PRISM Macro';</p> <p>(b) The Licensor has built up a substantial reputation and goodwill in the System which is associated with the highest standards of service;</p> <p>(c) The Licensor has developed unique know-how and specialised methods and documentation to be used with the System;</p> <p>(d) The System is designed and intended solely for educational and personal development purposes;</p> <p>(e) The Licensee wishes to acquire from the Licensor the right to operate the System within its own organisation and in accordance with the terms of and the conditions in this Agreement;</p> <p>(f) The Licensor has agreed to provide the Services and to grant the Licensee a non-exclusive licence to use the System upon the terms and conditions of this Agreement.</p> <p>(g) The Licensor has full power to enter into this agreement and to give the warranties and indemnities contained in this agreement.</p> | <p>3.6 All fees and charges are exclusive of value added tax which shall be added at the appropriate rate.</p> <p>4. Delivery.</p> <p>4.1 The Licensor shall deliver at least one copy of the System Materials to the Licensee and each of its Certificated Practitioners on the Delivery Date.</p> <p>4.2 If the Licensor shall fail to deliver the System Materials within 30 days of the Delivery Date the Licensee shall be entitled to either:</p> <p style="padding-left: 20px;">4.2.1 without prejudice to any other rights or remedies it may have, terminate this Agreement by giving 30 days' written notice to the Licensor; or</p> <p style="padding-left: 20px;">4.2.2 after consultation with the Licensor, specify by written notice to the Licensor such revised Delivery Date as it shall in its reasonable opinion think fit thus making time of the essence.</p> <p>5. Acceptance.</p> <p>5.1 The Licensee shall be deemed to have accepted the System Materials on the date recorded on the Licensor's website.</p> |
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OPERATIVE PROVISIONS

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| <p>1. Definitions.</p> <p>1.1 Where the context requires or admits words given meanings in the Appendix shall have the same meaning when used in this Agreement</p> <p style="padding-left: 20px;">1.2 Any reference in this Agreement to writing includes telex, cable, e-mail, facsimile transmission or similar means of communication.</p> <p>1.3 Any reference in this Agreement to any provision of a statute or statutory instrument shall be construed as a reference to that provision as amended, re-enacted or extended from time to time.</p> <p>2. Grant of Licence and Provision of Services.</p> <p>2.1 The Licensor in consideration of the payment by the Licensee of the Licence Fee hereby:</p> <p style="padding-left: 20px;">2.1.1 subject to clause 2.2, grants to the Licensee a non-exclusive licence to use the System at any place of business of the Licensee and to possess and refer to the System Materials; and</p> <p style="padding-left: 20px;">2.1.2 subject to payment of the relevant charges and to compliance by the Licensee with the obligations on the part of the Licensee herein contained, undertakes to provide the Licensee with the Services upon the terms and conditions contained in this Agreement.</p> <p>2.2 The use of the System by the Licensee granted in clause 2.1.1 is restricted to use by Certificated Practitioners.</p> <p>3. Charges.</p> <p>3.1 The Licence Fee shall be paid on the signing of this Agreement.</p> <p>3.2 The Licence Fee shall include the cost of the setting up [the processing services and the accounting services.]</p> <p>3.3 The Additional Charges shall be paid on delivery of an invoice for the same.</p> <p>3.4 The Licensor shall be entitled to vary its charges from time to time by giving to the Licensee 30 days written notice.</p> <p>3.5 The Licensor reserves the right to charge the Licensee interest in respect of the late payment of any sum due under this Agreement (as well after as before judgment) at the rate of 4 per centum per annum above the base lending rate from time to time of Barclays Bank plc or such other bank as the Licensor may from time to</p> | <p>6. Telephone Helpline.</p> <p>6.1 With effect from the Acceptance Date and for the duration of this Agreement, the Licensor shall provide advice on the operation and use of the System Materials by telephone during the Business Day.</p> <p>7. Property and Confidentiality in the System Materials.</p> <p>7.1 The System Materials contain Confidential Information and all copyright, trade marks, typographical arrangements and other intellectual property rights in the System Materials are the exclusive property of the Licensor.</p> <p>7.2 The Licensee shall not:</p> <p style="padding-left: 20px;">7.2.1 use or permit or cause to be used or permitted any part or application of the System or the System Materials in any communication between the Licensee and any third party (not being an officer, director or employee of the Licensee);</p> <p style="padding-left: 20px;">7.2.2 save as provided in clause 7.3.5 below, copy the whole or any part of the System Materials;</p> <p style="padding-left: 20px;">7.2.3 modify merge or combine the whole or any part of the System Materials with any other documentation;</p> <p style="padding-left: 20px;">7.2.4 assign transfer sell lease rent charge or otherwise deal in or encumber the System Materials or use on behalf of or make available the same to any third party.</p> <p>7.3 The Licensee shall:</p> <p style="padding-left: 20px;">7.3.1 keep confidential the System Materials and limit access to the same to those of its employees who either have a need to know or who are engaged in the use of the System (including where appropriate the System Materials);</p> <p style="padding-left: 20px;">7.3.2 reproduce on any copy of the System Materials the Licensor's copyright, trade mark and registered design notices;</p> <p style="padding-left: 20px;">7.3.3 maintain an up-to-date written record of the number of copies of the System Materials and their location and upon request forthwith produce such record to the Licensor;</p> <p style="padding-left: 20px;">7.3.4 without prejudice to the foregoing, take all such steps as shall from time to time be necessary to protect the</p> |
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<p>7.3.5 confidential information and the intellectual property rights of the Licensor in the System Materials; and comply with its obligations under the 1998 Act in relation to any data generated by the use of the System or the System Materials and shall not act in any way which may result in the Licensor incurring any liability under the 1998 Act.</p> <p>7.4 The Licensee shall inform all relevant employees agents and subcontractors that the System Materials constitute Confidential Information and that all intellectual property rights therein are the property of the Licensor and the Licensee shall take such steps as may be necessary to ensure compliance by its employees agents and subcontractors with the provisions of this clause 7.</p> <p>7.5 PRISM and 'PRISM Personal Performance Mapping' are trade marks and the Licensee is expressly prohibited from use of such names in any e-mail, Internet or other electronic communication between the Licensee and any third party or in any other communication of whatever nature.</p> <p>7.6 The Licensee shall indemnify the Licensor against all costs, claims, liabilities and expenses incurred by the Licensor in connection with or arising from any claim by any of the Licensee's directors, officers, employees, agents, subcontractors or consultants or any third party, in respect of the Licensee's use of the System Materials .</p> <p>8. Warranty.</p> <p>8.1 Subject to the exceptions set out in clauses 8.4 to 8.6 below and the limitations upon its liability in clause 9 below the Licensor warrants that:</p> <p>8.1.1 it has the right power and authority to licence the use of the System Materials upon the terms and conditions of this Agreement;</p> <p>8.1.2 the System Materials will for a period of 30 days from the Acceptance Date be free from defects in materials design and workmanship;</p> <p>8.1.3 the System will for a period of 60 days from the Acceptance Date conform to the System Specifications; and</p> <p>8.1.4 it will perform the Services with reasonable care and skill.</p> <p>8.2 The Licensee shall give written notice to the Licensor as soon as it is reasonably able upon becoming aware of a breach of warranty.</p> <p>8.3 Subject to clause 8.4 below, the Licensor shall remedy any breach of the warranties set out in clause 8.1 above by the provision of the Helpline service provided that if the Licensor complies with this clause 8.3 it shall have no further liability in respect of a breach of the warranty set out in clause 8.1 above.</p> <p>8.4 The Licensor shall have no liability to remedy a breach of warranty where such breach arises as a result of the improper use of the System or the System Materials.</p> <p>8.5 The System is designed and intended solely for educational and personal development purposes and is not designed or intended for any other use (including but not limited to determining the suitability of any individual for education, employment, promotion, demotion, reassignment or any qualitative personal function unsupported by other means) and the Licensee shall not be entitled to rely on the System when used for any unintended purpose.</p> <p>8.6 Save as aforesaid, all conditions warranties terms and undertakings express or implied statutory or otherwise in respect of the System Materials and the provision of the Services are hereby excluded to the fullest extent permitted by law.</p> <p>9. Limitation of Liability.</p> <p>9.1 The Licensor does not exclude or limit its liability in negligence for death or personal injury, or for fraud or wilful default or otherwise insofar as the liability of the Licensor cannot lawfully be excluded or limited. All provisions of this Agreement shall be read subject to this clause 9.1.</p> <p>9.2 In no circumstances shall the Licensor be liable to the Licensee, in contract, in tort (including negligence and breaches of statutory duties, misrepresentation or otherwise) for any loss or depletion of profits, business, revenue, goodwill or anticipated savings or for any indirect or consequential or economic loss whatsoever howsoever arising out of or in connection with this Agreement or the use of the System or the System Materials.</p> <p>9.3 The Licensor shall have no liability to the Licensee in respect of any breach of this Agreement unless the Licensee shall have</p>	<p>9.4 If, notwithstanding provisions in this Agreement which purport to exclude or limit the Licensor's liability, the Licensor is found liable in excess of the liability expressly accepted by it, then its total liability to the Licensee, in contract and in tort or otherwise, for all claims arising out of or in connection with this Agreement, shall be limited to £2,500 GBP.</p> <p>10. Intellectual Property Rights Indemnity.</p> <p>10.1 The Licensor will within the financial limit set by clause 9.4 indemnify and hold harmless the Licensee against any damages (including costs) that may be awarded or agreed to be paid by the Licensee to any third party in respect of an Intellectual Property Infringement provided that the Licensee:</p> <p>10.1.1 gives written notice to the Licensor of any Intellectual Property Infringement forthwith upon becoming aware of the same;</p> <p>10.1.2 gives the Licensor the sole conduct of the defence to any claim or action in respect of an Intellectual Property Infringement and does not at any time admit liability or otherwise attempt to settle or compromise the said claim or action except upon the express written instructions of the Licensor; and</p> <p>10.1.3 acts in accordance with the reasonable instructions of the Licensor and gives to the Licensor such assistance as it shall reasonably require in respect of the conduct of the said defence including, without prejudice to the generality of the foregoing, the filing of all pleadings and other court process and the provision of all relevant documents. The Licensor shall reimburse the Licensee its reasonable costs incurred in complying with the provisions of clause 10.1.2 above.</p> <p>10.2 The Licensor shall have no liability to the Licensee in respect of any Intellectual Property Infringement if the same results from any breach of the Licensee's obligations under this Agreement.</p> <p>10.3 In the event of an Intellectual Property Infringement the Licensor shall be entitled at its own expense and option either to:</p> <p>10.3.1 procure the right for the Licensee to continue using the System Materials ; or</p> <p>10.3.2 make such alterations modifications or adjustments to the System Materials so that they become non-infringing without causing or incurring a material diminution in performance or function; or</p> <p>10.3.3 replace the System Materials with non-infringing substitutes provided that such substitutes do not entail a material diminution in performance or function.</p> <p>10.4 If the Licensor in its reasonable judgement within 21 days of the date it receives notice of the Intellectual Property Infringement is not able to exercise any of the options set out at clauses 10.3.1, 10.3.2 or 10.3.3 above it shall notify the Licensee of that decision and thereupon the Licensee without prejudice to any other right or remedy it may have hereunder or at law shall be entitled to terminate this Agreement by giving 7 days' written notice to the Licensor. Upon any such termination the provisions of clause 16.3 below shall apply.</p> <p>11. Confidentiality.</p> <p>11.1 Each of the parties hereto undertakes to the other to keep confidential all information (written or oral) concerning the business and affairs of the other that it obtains or receives or has already obtained or received in connection with this Agreement (including discussions leading up to or the entering into of the agreement) save that which is:</p> <p>11.1.1 trivial or obvious;</p> <p>11.1.2 already in one party's possession and not obtained or received from the other party;</p> <p>11.1.3 in the public domain other than as a result of a breach of this clause; or</p> <p>11.1.4 required to be disclosed by law;</p> <p>11.2 Each of the parties undertakes to the other that it will take all such steps as shall from time to time be necessary to ensure compliance with the provisions of clause 15.3 below by its employees agents and subcontractors.</p>
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11.3	The provisions of this clause 11 shall survive any termination of this Agreement for a period of 6 years from that termination.	16.	Force Majeure.
12.	Training.	16.1	Neither party hereto shall be liable for any breach of its obligations hereunder resulting from an Event of Force Majeure.
12.1	Any training services requested by the Licensee and provided by the Licensor in addition to those required for the Practitioner's Certification Training Course shall be provided by the Licensor at the cost or rate previously agreed between the parties and if not so agreed at a cost which is reasonable in all the circumstances having regard to the cost of other services being provided by the Licensor at that time.	16.2	Each of the parties hereto agrees to give written notice forthwith to the other upon becoming aware of an Event of Force Majeure such notice to contain details of the circumstances giving rise to the Event of Force Majeure.
13.	Duration of Agreement.	16.3	If a default due to an Event of Force Majeure shall continue for more than 12 weeks then the party not in default shall be entitled to terminate this Agreement forthwith by written notice to the party in default. Neither party shall have any liability to the other in respect of the termination of this Agreement as a result of an Event of Force Majeure provided that this clause 16.3 shall not absolve the Licensee of its obligations to pay any sums due to the Licensor under this Agreement.
13.1	This Agreement commences on the date on which it is signed by both parties and shall continue until and unless otherwise terminated in accordance with the provisions of clause 15 below.	17.	Waiver.
13.2	The Licensee shall not be entitled to any refund or partial refund of the Licence Fee or any Additional Charges paid in advance upon expiry or termination of this Agreement (howsoever caused).	17.1	The waiver by either party of a breach or default in performance of any of the provisions of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or other provisions nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has or may have hereunder operate as a waiver of any breach or default by the other party.
14.	Licensee's Representation.	18.	Notices.
14.1	The Licensee shall communicate in writing to the Licensor the identity of the person(s) within its undertaking who shall act as the main and subsidiary contact points and channels of communication for the provision by the Licensor of the Services during the currency of this Agreement. The Licensee shall forthwith inform the Licensor in writing of any change in the identity of any such person.	18.1	Any notice request instruction or other document to be given hereunder shall be delivered or sent by first class post or telex or telecopier (such telex or telecopier notice to be confirmed by letter posted within 12 hours) to the address of the other party set out in this Agreement (or such other address as may have been notified) and any such notice or other document shall be deemed to have been served (if delivered) at the time of delivery (if sent by post) upon the expiration of 48 hours after posting and (if sent by telex or telecopier) upon the expiration of 12 hours after dispatch. A notice request instruction or other document may not be served by e-mail or facsimile.
15.	Termination.	19.	Invalidity and Severability.
15.1	This Agreement may be terminated:	19.1	If any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid or unenforceable the invalidity or unenforceability of such provision shall not affect the other provisions of this Agreement and all provisions not affected by such invalidity or unenforceability shall remain in full force and effect.
15.1.1	by the Licensee upon giving not less than 30 days' written notice to the Licensor;	19.2	The parties agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic legal and commercial objectives of the invalid or unenforceable provision.
15.1.2	forthwith by the Licensor by written notice to the Licensee if the Licensee fails to pay any sum due hereunder within 30 days of the due date therefore;	20	Exclusion of Liability.
15.1.3	forthwith by either party by written notice to the other party if the other commits any material breach of any term of this Agreement (other than one falling within 15.1.2 above) and which (in the case of a breach capable of being remedied shall not have been remedied within 30 days of a written request to remedy the same;	20.1	The Licensor shall not be liable to the Licensee for loss arising from or in connection with any representations, agreements, statements or undertakings made prior to the date of execution of this Agreement other than those representations agreements statements or undertakings confirmed by a duly authorised representative of the Licensor in writing or expressly incorporated or referred to in this Agreement.
15.1.4	forthwith by either party by written notice to the other party if the other shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part I of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or if the other shall be unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or if a trustee receiver administrative receiver or other similar officer is appointed in respect of all or any part of the business or assets of the other or if a petition is presented or a meeting is convened for the purpose of considering a resolution or other steps are taken for the winding up of the other or for the making of an administration order (otherwise than for the purpose of an amalgamation or reconstruction).	20.2	The Licensee accepts that the System Materials were not designed and produced to its individual requirements and that it was responsible for their selection.
15.2	Any termination of this Agreement pursuant to this clause shall be without prejudice to any other rights or remedies a party may be entitled to hereunder or at law and shall not affect any accrued rights or liabilities of either party nor the coming into or continuance in force of any provision hereof which is expressly or by implication intended to come into or continue in force on or after such termination.	21	Entire Agreement.
15.3	Within 7 days of the termination of this Agreement (howsoever and by whomsoever occasioned) the Licensee shall return all copies of the System Materials in its possession and destroy all copies of the System Materials maintained in electronic form and a duly authorised officer of the Licensee shall within the same period certify in writing to the Licensor that the Licensee has complied with such obligation.	21.1	This Agreement constitutes the entire agreement between the parties.
		22.	Successors.
		22.1	This Agreement shall be binding upon and endure for the benefit of the authorised successors in title of the parties hereto.
		23.	Assignment and Sub-Licensing.

- 23.1 The Licensee shall not be entitled to assign this Agreement or any of its rights or obligations hereunder or sub-licence the use (in whole or in part) of the System Materials without the prior written consent of the Licensor. In giving its consent the Licensor shall be entitled to impose such additional conditions upon the assignee as it shall consider appropriate.
24. **Right of Third Parties.**
- 24.1 This Agreement is not intended to confer a benefit on any third party and the provisions of the Contracts (Rights of Third Parties) Act 1999 are excluded in full.
25. **Headings.**
- 25.1 Headings to clauses in this Agreement are for the purpose of information and identification only and shall not be construed as forming part of this Agreement.
26. **Data Protection.**
- 26.1 The Licensee agrees that it will in relation to the Data:
- 26.1.1 process the Data in accordance with the 1998 Act;
- 26.1.2 process the Data only so far as is necessary for the purpose of performing its obligations under this Agreement;
- 26.1.3 not disclose the Data to anyone other than an employee or third party engaged by the Licensee to perform any obligation imposed on the Licensee by this Agreement and ensure that such employee or third party is subject to written contractual obligations concerning the Data which are no less onerous than those imposed on the Licensee by this Agreement;
- 26.1.4 not allow access to the Data other than by an employee or third party engaged by the Licensee to perform any obligation imposed on the Licensee by this Agreement and ensure that such employee or third party is subject to written contractual obligations concerning the Data which are no less onerous than those imposed on the Licensee by this Agreement;
- 26.1.5 use all reasonable efforts to assist the Licensor to comply with such obligations as are imposed on the Licensor by the 1998 Act. This includes the obligation to:
- 26.1.5.1 provide the Licensor with reasonable assistance in complying with any subject access request served on the Licensor under section 7 of the 1998 Act; and
- 26.1.5.2 promptly inform the Licensor about the receipt of any subject access request received by the Licensee;
- 26.1.5.3 not disclose or release any of the Data in response to a subject access request without first consulting with and obtaining the consent of the Licensor; and
- 26.1.5.4 inform any individual whose personal data may be processed under this Agreement, of such processing. For the avoidance of doubt, this includes informing such individuals that on the termination of this Agreement, personal data relating to them, including personal data contained in any customer list, shall be retained by or, as the case may be, transferred to the Licensor. In addition the Licensee shall obtain any necessary consents for such processing under the 1998 Act. To ensure that the Licensor's obligations under the 1998 Act are complied with, the Licensee agrees to allow the Licensor to approve and if the Licensor deems necessary, amend, any such notice.
- 26.2 Insofar as the Licensee acts as a Data Processor or on behalf of the Licensor in relation to the Data, the Licensee agrees to comply with the Seventh Principle which shall include:
- 26.2.1 maintaining technical and organisational security measures sufficient to comply at least with the obligations imposed on the Licensor by the Seventh Principle;
- 26.2.2 only processing Data for and on behalf of the Licensor for the purpose of performing its obligations under and in accordance with this Agreement and only on written instructions from Licensor to ensure compliance with the 1998 Act;
- 26.3 The Licensee agrees to provide the Licensor with contact details of at least one employee of the Licensee whom for the Licensor may contact to provide in relation to enquiries information about the Licensee and to display on the Licensor's website. The Licensee agrees to ensure that for this purpose, any notices and/or consents required for the Licensor to comply with the 1998 Act shall be provided to/acquired from such employee by the Licensee on behalf of the Licensor.
- 26.4 The Licensee shall indemnify the Licensor against all claims and proceedings and all liability, loss, cost and expenses incurred in connection therewith incurred by the Licensor as a result of any claim made or brought by an individual or other legal person in respect of any loss, damage or distress caused to that individual or other legal person as a result of the Licensee's unauthorised processing, unlawful processing, destruction of and/or damage to any of the Data processed by the Licensee, its employees or agents.
- 26.5 The Licensor reserves the right to discontinue the *PRISM* website or terminate the Licensee's access to it, at its discretion.
27. **Law.**
- 27.1 This Agreement shall be governed by and construed in accordance with English law and the parties hereto agree to submit to the exclusive jurisdiction of the English courts.

APPENDIX

Definitions:

- ‘1998 ACT’ means the Data Protection Act 1998 (or any laws which are analogous to that Act under any relevant foreign jurisdiction) and any other applicable data protection legislation;
- ‘ACCEPTANCE DATE’ means the date on which the Licensee is deemed to have accepted the System Materials in accordance with clause 5.1 of the Agreement;
- ‘ACTUAL DELIVERY DATE’ means the date on which the System Materials are delivered by the Licensor in accordance with clause 4 of the Agreement;
- ‘ACCOUNTING SERVICES’ means the provision of an account and account number and an access number and security (PIN) number making and or the provision of a record of a transaction and the record of the creation and use of credits;
- ‘CHARGES’ means the Licensor’s rates of charge from time to time for work undertaken, services provided and time and materials supplied. Such charges may be changed from time to time in accordance with clause 3.3 of the Agreement;
- ‘AGREEMENT’ means the agreement to which this Appendix is attached;
- ‘ASSESSMENT PROFILE NARRATIVE’ means a written statement highlighting an individual’s relevant characteristics based on an analysis of the data supplied by an individual through profile observations and the employer through a job requirement profile;
- ‘BUSINESS DAY’ means between the hours of 9.00 am and 5.30 pm (GMT/BST) from Monday through to Friday inclusive (excluding statutory, bank and other public holidays in the United Kingdom);
- ‘CERTIFICATED Practitioner’ means an employee of the Licensee who has successfully completed a course of instruction provided by the Licensor in the use and interpretation of the System and who has passed the appropriate competency assessment examination;
- ‘CONFIDENTIAL INFORMATION’ means any information which is disclosed to the Licensee or its employees by the Licensor pursuant to, or in connection with, the Agreement (whether orally or in writing and whether or not such information is expressly stated to be confidential) or shall otherwise come into the hands of the Licensee in relation to the System, other than information which is already in the public domain;
- ‘CREDIT’ means a unit of charge which can be purchased at the current rate;
- ‘DATA’ means personal data processed in connection with the Agreement;
- ‘DATA PROCESSOR’ means a person or organisation which processes personal data on behalf of a data controller or on behalf of the Licensor in relation to the Data;
- ‘DELIVERY DATE’ means the estimated date for the delivery of the System Materials and in relation to a Certificated Practitioner means the date on which there is delivered to that person an access card and PIN number which will allow access to the System upon completion of a course of practical training and receipt of a complete Manual;
- ‘EVENT OF FORCE MAJEURE’ means an unforeseen event which arises as a result of Force Majeure;
- ‘Practitioner’S MANUAL’ means the loose-leaf handbook of training materials containing exercises user guides and other information including Personal Performance and Job questionnaires and guidance given to a trainee during their course;
- ‘FORCE MAJEURE’ means any circumstance beyond the reasonable control of either party including (without limitation) an act of God, fires, strikes (of its own or other employees), insurrections or riots, embargoes, war or national emergency, regulations of any civil or military authority or failure of or interruption to telecommunication services or equipment;
- ‘INDICATOR’ and ‘PERSONAL PERFORMANCE INDICATOR’ means the result produced by the Licensor of analysing and interpreting a Profile;
- ‘INTELLECTUAL PROPERTY’ means that all the System Materials which are the copyright of the Center of Applied Neuroscience;
- ‘INTELLECTUAL PROPERTY INFRINGEMENT’ means any claim or action that the normal operation possession or use of the System Materials by the Licensee infringes the patent copyright registered design or trade mark rights of a third party;
- ‘JOB REQUIREMENT PROFILE’ means the analysis of an employer’s requirements produced by the Licensor from a consideration of the JOB BENCHMARK or questionnaire;
- ‘LICENCE FEE’ means a one-off payment of the amount specified at the time the Licensee successfully undertakes *PRISM* certification training;

‘NEW RELEASE’ means any improved, modified or corrected version of any of the System Materials;

‘OBSERVATION PROFILE’ means the analysis of performance produced by the Licensor from a consideration of at least four observation questionnaires;

‘PERSONAL PERFORMANCE INDICATOR’ means the result produced by the Licensor of analysing and interpreting a Profile;

‘PERSONAL PERFORMANCE INVENTORY’ means a questionnaire produced by the Licensor for use in connection with the System;

‘PERSONAL PERFORMANCE MAPPING’ means the analysis of data relating to an individual often resulting from the study of Personal Performance Indicators;

‘PRISM PERSONAL PERFORMANCE MAPPING’ is a registered trade mark of the Center for Applied Neuroscience;

‘PROCESS’ and ‘PROCESSING’ mean obtaining, recording or holding personal data or carrying out any operation or set of operations on the personal data, including:

- 1 organisation, adaptation or alteration;
- 2 retrieval, consultation or use;
- 3 disclosure by transmission, dissemination or otherwise making available; or
- 4 alignment, combination, blocking, erasure or destruction.

‘PROCESSING SERVICES’ means the establishment of an account within the System for the use by the Licensee and the provision of an account number and an access number and security (PIN) number and thereafter the making and or the provision of a record of a transaction and the record of the creation and use of credits;

‘PROFILE MAP’ means a visual representation or diagrammatic interpretation of data as a result of the analysis of information within the System from *PRISM* Inventories and replies to questionnaires and Job Requirement questionnaires;

‘PROFILE NARRATIVE’ means a written report analysing the information provided by *PRISM* Inventories;

‘SCHEDULE’ means the schedule or schedules to the Agreement signed by or on behalf of the parties hereto and forming part of or attached to the Agreement;

‘SERVICES’ means the provision of Profile Indicator Maps, Narratives and other materials in accordance with the Agreement;

‘SYSTEM’ means the process developed by the Licensor which uses the System Materials and specialist methods and know-how for the purpose of identifying employment and business requirements and behaviours of individuals and matching those requirements and behaviours within the Licensee’s organisation by producing a range of Profiles Indicators Maps and Narratives;

‘SYSTEM MATERIALS’ means the Practitioner’s Manual and other information including an access card (which will include an account number, access code and security number) to be made available by the Licensor in either printed or electronic form to the Licensee and its Certificated Practitioners;

‘TECHNICAL SUPPORT’ means the provision of a Telephone Helpline during the Business Day;

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