

## HBDI® Technology and Herrmann Materials Licensing Agreement

This HBDI® Technology Licensing Agreement (this "Agreement") is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
(the "Effective Date") by and between Herrmann International, Inc., ("Licensor") and \_\_\_\_\_ ("Licensee").

The parties hereby agree as follows:

### 1. Definitions.

- a) "HBDI®" means the Herrmann Brain Dominance Instrument.
- b) "Materials" means all materials, including all instructional materials and all other works of authorship of every kind and in every medium, the copyrights of which subsist in Licensor, together with all modifications thereto and all derivatives thereof.
- c) "Organization" means any legal entity other than a natural person.
- d) "Participants" means individuals who utilize any Materials in connection with training provided by Practitioners.
- e) "Participant Materials" means those Materials intended for use by Participants in connection with training provided by a Practitioner, including, without limitation, workbooks.
- f) "Practitioners" has the meaning set forth in Section 4.
- g) "Services" means all services offered by Licensor in connection with the HBDI®, including, without limitation, all processing, consulting, analysis, training, certification, and similar services.
- h) "Software" means all software, including on-line applications offered by Licensor to facilitate any Services.
- i) "Assessment Recipients" means individuals to whom a Practitioner administers the HBDI®.
- j) "Term" has the meaning set forth in Section 2.

### 2. Term.

The term of this Agreement (the "Term") will be one (1) year, commencing on the Effective Date, and will automatically renew for additional periods of one (1) year each until either party delivers written notice of non-renewal to the other party at least sixty (60) days prior to the end of the Term (including any renewals).

Notwithstanding the foregoing, this agreement will remain in force until the completion, termination or expiration of all orders or similar documents executed by the parties and referencing this Agreement. Rights of Grantor to enforce this agreement shall survive termination.

### 3. License Grants.

Subject to all of the terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee the following non-exclusive, non-transferrable license rights:

- a) Licensee may purchase Services from Licensor, and, as applicable, provide Assessment Recipients and Participants with access to such Services, including any associated Software.
- b) Licensee may administer the HBDI® to Assessment Recipients.
- c) Licensee may distribute Materials purchased from Licensor to Assessment Recipients and Participants.
- d) Licensee may utilize the HBDI®, Materials and Services to provide training, development and counseling to Assessment Recipients and Participants.
- e) Participants may retain for their own use and reference Participant Materials distributed to them by Licensee in connection with training provided by Licensee
- f) If Licensee desires any other license grants with respect to the HBDI® or Materials, and if Licensor is willing to grant such license(s), such rights shall only be granted by a written agreement signed by both parties referencing this agreement.

Except as described in this Section 3, Licensee may not copy, modify, or distribute the HBDI®, Materials or Services in any manner. A separate copy of the applicable Participant Materials must be purchased for each Participant trained by a Practitioner. Such Participant Materials may not be re-used to train additional Participants.

Licensee acknowledges and agrees that, subject to the license grants above, Licensor will retain all of its rights, title and interest in and to the HBDI® and the Materials and that any unauthorized copying, distribution, display, performance, creation of derivative work or inclusion with other works, or modification of the HBDI, the HBD model, the Materials or any portions thereof is deemed an infringement of Licensor's copyrights. Licensee may not use any logo or trade names of Licensor without written authorization from Licensor.

Further, Licensee has no right to post Materials or images of Materials on the internet.

#### **4. Practitioner Certification.**

Licensee acknowledges and agrees that any persons who administer process, teach, interpret, or facilitate the HBDI® must be trained and certified by persons designated by Licensor to provide such training and certification. Persons who receive certification are referred to herein as "Practitioners." If Licensee is an individual, he or she must be certified as a Practitioner before conducting any of the foregoing activities. If Licensee is an Organization, Licensee must ensure that any individuals conducting any of the foregoing activities on behalf of Licensee are certified as Practitioners.

Licensee further acknowledges and agrees that additional training and certification (beyond basic Practitioner certification) are required prior to Practitioners' use of certain Materials to train Participants. For example, *Level I* and *Level II* or *Whole Brain® Certification* are required before a Practitioner may train Participants using *The Business of Thinking®* Materials. Specific certification requirements are located at [www.HerrmannSolutions.com](http://www.HerrmannSolutions.com). Licensee is responsible for determining, understanding and complying with all certification requirements prior to utilizing any training Materials.

Practitioners must adhere to all of Licensor's guidelines, policies and procedures pertaining to instruction, interpretation, and application of the HBDI®. If Licensee is an Organization, Licensee is also responsible to ensure such compliance.

Licensor reserves the right to modify its certification requirements in its sole discretion and to require additional training from time to time in order for Practitioners to maintain their certified status. Licensee acknowledges that Licensor will charge fees for all training and certification Services.

Licensor may revoke the certification of any Practitioner for good cause, including, without

limitation, the Practitioner's failure to follow Licensor's guidelines, policies and procedure, or Licensor's good faith belief that the Practitioner is no longer willing to or capable of upholding Licensor's quality standards for training. If Licensee is an Organization, Licensee may also revoke the certification of any Practitioner for whom the Organization has paid certification. A party will give written notification to the other party of any certification revocation within ten (10) business days following the revocation. Should a Certified Practitioner no longer be available to Licensee for any reasons, such as leaving the employ of Licensee, Licensee will immediately suspend all HBDI® Assessment administrations and associated training utilizing Materials until a new Practitioner has been trained and certified by Licensor. In the interim period, Licensee may contract with Licensor for the provision of a Practitioner, if required.

#### **5. Data and Privacy Protection.**

If Licensee is an Organization, Licensee agrees that only Practitioners may administer the HBDI®; handle or review the HBDI® survey forms; process or archive the HBDI® surveys or any derivative data; prepare, collate, distribute, or present information concerning individual profile packages; or disseminate any other HBDI® related or derivative information.

Licensee agrees that, under no circumstances, will any Assessment Recipient's HBDI® profile information be disclosed, or made available in any manner, to anyone other than certified practitioners or Licensor without the written consent of the Assessment Recipient. Licensee further agrees that, under no circumstances, will HBDI® profile information be used for inappropriate or illegal discrimination against any individual. Licensee further agrees to comply with data privacy laws which apply to it jurisdiction and to the jurisdiction in which participants are domiciled, unless such participants have lawfully waived their right to data privacy.

Licensee will ensure that all HBDI® data and information will be stored and archived in a secure place, and will be available only to Practitioners. Where electronic storage is employed, access will be denied by fully secure means to all but Practitioners.

Licensee will comply fully with all data security and privacy laws applicable in every jurisdiction in which Licensee operates or in which Licensee controls or processes personally identifiable information in connection with this Agreement. Licensee will indemnify Licensor and Licensor's owners, directors, employees, agents and representatives ("Indemnified Parties"), and hold them harmless, from any and all claims and liabilities (including reasonable attorneys'

fees) which may arise from Licensee's failure to comply with such laws.

**6. Prohibited Use of HBDI®.**

Licensee acknowledges that the HBDI® only measures thinking preferences, not situational abilities; and, additionally, the survey form can be manipulated by unauthentic responses. Therefore, Licensee agrees the instrument will not be used by Licensee for selecting employees for hiring, firing or promotion purposes.

**7. Modification of the HBDI®, Materials, etc.**

Licensor may modify or adjust the HBDI®, the Materials, the Services and Licensor's policies, guidelines and pricing from time to time, in its sole discretion.

**8. Pricing, Invoicing and Payment.**

Unless otherwise provided in a writing mutually executed by the parties, the fees for the HBDI®, Services and Materials will be those available at the time of purchase through Licensor. All rates and charges for the HBDI®, Services and Materials are exclusive of Service-related travel expenses, shipping and handling charges, and applicable sales and use taxes. Such expenses, charges and taxes will be invoiced separately to Licensee.

Licensee agrees to pay all amounts invoiced by Licensor for Materials and Services purchased hereunder within thirty (30) days after the invoice date. Finance charges of 1% per month will be assessed on all past due balances until paid. If Licensee fails to provide written notice of a good faith dispute after failing to make payments, Licensor may, in addition to any other available remedies, suspend all Services and Material deliveries to Licensee under this Agreement.

**9. Indemnification.**

Each party will indemnify, protect, defend, and hold harmless the other party from any and all liabilities, obligations, losses, claims, damages, actions, suits, proceedings, costs, and expenses including attorney fees, imposed or incurred by or asserted against the indemnified party or its permitted assigns, arising out of, in connection with, or resulting directly or indirectly from the negligence or willful misconduct of the indemnifying party or its employees or agents in connection with the performance of this Agreement or the use of the HBDI® or Materials.

**10. Disclaimer of Warranty.**

Licensor does not warrant, guarantee, or make any representations regarding the use or the results of the

HBDI® in terms of correctness, accuracy, reliability, currentness or otherwise. Neither Licensor nor any person who has been involved in the creation, production or delivery of the HBDI® will be liable for any direct, indirect, consequential or incidental damages arising out of the use, the results of use, or any inability to use the HBDI® or Materials. Services and Materials are provided without warranties of any kind, either express or implied to the fullest extent permitted by applicable law, including, but not limited to, implied warranties of merchantability and fitness for a particular purpose. Licensor uses industry standard methods to detect and protect electronically delivered Materials and Services against malicious program code insertions. However, Licensor does not warrant that the Services, Materials or their methods of delivery will be free of viruses or other harmful components introduced by third parties.

**11. Assignment.**

Neither party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may assign this Agreement to a successor to substantially all of its capital stock or assets (whether by sale, merger or otherwise), without the consent of the other party; provided that such assigning party gives the other party prompt written notice of such assignment.

**12. Cancellation of Services; Return of Materials.**

If Licensor's personnel (employees or contractors) are scheduled to deliver Services for Licensee, Licensee may cancel or reschedule such Services without cost or obligation by delivering written notice to Licensor more than fifteen (15) business days prior to the scheduled commencement of the Services. If Licensee reschedules or cancels Services with fifteen (15) business days written notice or less, Licensee will pay a cancellation fee. Service price. If no written notice is delivered, Licensee will be liable for all quoted fees and costs of the Service.

If Licensee desires to return unused Materials, Licensee must first obtain a return authorization number from Licensor within thirty (30) business days of receipt of such Materials. Licensor may issue a credit for the returned Materials that are in new condition, but no cash refund will be issued. Licensee is responsible for all return freight charges. A restocking fee of fifteen percent (15%) of the invoiced price will be deducted from the credit issued for the returned Materials. Credits will expire one (1) year after they are issued.

### **13. Termination.**

In addition a party's termination of this agreement by delivering notice of non-renewal in accordance with Section 2, this Agreement may also be terminated: (a) by Licensee, upon fifteen (15) days written notice, provided that Licensee will remain obligated to pay for all Materials and Services delivered or performed by Licensor prior to the date of termination, and for any cancellation fees described in Section 12; (b) by written notice from either party in the event the other party materially defaults in the performance of its obligations hereunder, which default has not been substantially cured within thirty (30) days after written notice has been given to the defaulting party specifying the default; (c) by Licensor immediately, in the event Licensee has breached any license grant provisions set forth in Section 3, or (d) immediately by either party if the other party ceases to conduct business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of, or become subject to, any proceeding under the Federal Bankruptcy Code or any other statute of any state relating to insolvency or the protection of rights of creditors, or fails to have stayed, within sixty (60) days, any involuntary proceeding brought against it under the Federal Bankruptcy Code or similar statute.

### **14. Governing Law.**

This Agreement will be construed pursuant, to the laws of the State of North Carolina, USA. The parties agree that any action brought by either party against the other in connection with any rights or obligations arising out of this Agreement will be instituted only in a federal or state court of competent jurisdiction located in North Carolina.

### **15. Entire Agreement; Modification; Waiver.**

This Agreement contains the entire agreement of the parties concerning the HBDI®, Services, Materials and other subject matter contained herein, and supersedes any other prior agreements, understandings, representations, promises, or conditions relating to the same.

Any changes, additions, or deletions of this Agreement must be in writing and signed by each of the parties. Waiver by either party of a breach of any provision of this Agreement will not be construed as a waiver of any different or subsequent breach of this Agreement.

### **16. Notices.**

Notices permitted or required under this Agreement are deemed to have been given when delivered, or upon receipt by certified or registered mail, postage

prepaid, or by other means where receipt can be confirmed, properly addressed to the parties as follows:

Licensor:

Herrmann International, Inc.  
Attn: Ann Herrmann-Nehdi, CEO  
794 Buffalo Creek Road  
Lake Lure, NC 28746  
USA

Licensee:

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

### **17. Force Majeure.**

Each party will be excused from performance hereunder (except for the payment of money due) for any period and to the extent that it is prevented from performing its obligations, in whole or in part, as a result of delays caused by the other party or by an act of God, war, civil disturbance, terrorism or nonperformance by third party providers of goods or services, and such nonperformance shall not be a default hereunder or, except as provided in this Section 17, a ground for termination. The party excused by the force majeure event will use its best efforts to alleviate the consequences of such event. If the force majeure event continues to prevent the performance of a material obligation for more than thirty (30) days, the party having the right to receive the affected performance will have the right to terminate this Agreement upon written notice.

### **18. Relationship of the Parties.**

The parties are independent contractors. Neither this Agreement nor any terms and conditions contained herein will be construed as creating a partnership, joint venture or agency relationship. Neither of the parties has any authority to bind the other or otherwise to act in any way as the representative of the other party except as expressly agreed in this Agreement or in another writing.

### **19. Survival.**

Rights and obligations under this Agreement which by their nature should survive will remain in effect after termination or expiration of this Agreement.

### **20. Enforcement and Interpretation.**

If either party brings an action against the other party to enforce its rights under this Agreement, the prevailing party will be entitled to recover its actual attorneys' fees and expenses incurred in resolving

such action, whether by lawsuit or otherwise and including any appeal.

In the event any portion of this Agreement is deemed to be invalid under any applicable law, such provision will be deemed void, and the remainder of this Agreement will continue in full force and effect. The title headings contained in this Agreement are for reference purposes only and have no interpretive effect on the rights and obligations of the parties.

## **21. Execution.**

This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one instrument.

In witness whereof, the Licensors and the Licensee have executed this Agreement by their respective authorized representatives below.

**Licensors:**  
**Herrmann International, Inc.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Licensee:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date