

# Blackblot

# Psychometric Testing

# Program Agreement



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## 1. Purpose

- 1.1. Blackblot® - Product Management Expertise™ ("Blackblot") is a provider of premium product management expert services for market leaders and innovators worldwide. Through its work, Blackblot has demonstrated a commitment to the development of the product management domain and the recognition of this field as a respected profession.
- 1.2. As part of that continuing development, Blackblot has developed a psychometric testing program. The Blackblot Psychometric Testing Program provides practitioners, team leaders, job candidates, human resource managers and recruiters with means to assess whether a certain individual's skill set profile is suitable for a specific role in product management, as defined by Blackblot and according to the Blackblot PMTK methodology™.
- 1.3. The Blackblot Psychometric Testing Program enables individuals to evaluate and classify their level of suitability to a product management role in an objective and statistically-valid manner which is based on a consistently unified Blackblot PMTK methodology™ role profile and assessment process.
- 1.4. The Blackblot Psychometric Testing Program is suitable for all individuals who are actively working in product management roles or for someone who is considering entering the product management profession and would like to validate and assess their current level of suitability.
- 1.5. By indicating your consent to the "*Blackblot Psychometric Testing Program Agreement*" ("Psychometric Testing Agreement"), you acknowledge that you understand and agree with the following provisions which state that the Blackblot Psychometric Testing Program does not:
  - 1.5.1. Provide for actual on-the-job performance testing.
  - 1.5.2. Substitute for actual product management experience.
  - 1.5.3. Transmit via the internet any personal information or scores.
  - 1.5.4. Constitute certification tests or professional accreditations of any kind.
  - 1.5.5. Teach nor test all that is needed to become a qualified product manager.
  - 1.5.6. Substitute for actual training, and are neither tutorials nor study guides.
  - 1.5.7. Certify that an individual has a certain level of knowledge in a particular product management related topic.
  - 1.5.8. Designate any individual as being more qualified, experienced or more suitable than another for any product management role or tasks.
- 1.6. This "Psychometric Testing Agreement" governs all Blackblot psychometric testing programs.
- 1.7. Blackblot reserves the right to add or retire the Blackblot Psychometric Testing Program at its own and sole discretion, and without prior notice.

## 2. **Definitions**

- 2.1. **"Program"** – One of the Blackblot Psychometric Testing Programs offered by Blackblot under this "Psychometric Testing Agreement".
- 2.2. **"Test"** – An examination; a series of questions designed to gauge a person's affinity, profile or ability. A psychometric testing "Program" may include one or more "Tests" who are independent or dependent of each other.
- 2.3. **"Track"** – A combination of two or more "Tests" within a given psychometric testing "Program". The "Tests" are logically linked to provide candidates with a structured progression path and/or an elevated tier designation.
- 2.4. **"Marks"** – The Blackblot trademark, service marks and logos, including, but not limited to, any marks of Blackblot that are registered with the appropriate Patent and Trademark Office and the psychometric testing marks, logos, and any other marks or logos that Blackblot may designate as psychometric testing marks for use the Blackblot Psychometric Testing Program.
- 2.5. **"Grade"** – The mark that designates the rank that is assigned to you following a successful completion of a required test within a given "Program".

## 3. **Psychometric Testing**

- 3.1. Your valid participation in a "Program" is based on your successful completion of the required testing and your compliance with the terms and requirements described in this agreement. You acknowledge that Blackblot has the right to change at any time the requirements for obtaining or maintaining any "Program" marks. You are solely responsible for keeping yourself informed of Blackblot's "Program" requirements. If you do not comply with the requirements described in this agreement, your "Grade" in a "Program" may be revoked by Blackblot without further notice, and all your rights pertaining to that "Program" (including the right to use the applicable "Marks") will terminate. NOTWITHSTANDING ANYTHING IN THIS BLACBLOT PSYCHOMETRIC TESTING AGREEMENT TO THE CONTRARY, BLACKBLOT HAS THE RIGHT NOT TO GRANT OR RENEW YOUR GRADE IF BLACKBLOT IN GOOD FAITH DETERMINES THAT YOUR GRADE OR USE OF THE CORRESPONDING MARKS WILL ADVERSELY AFFECT BLACKBLOT.

## 4. **Transfer Of Marks**

- 4.1. You retain your "Marks" if you leave your current employment and/or begin working with a new organization; however, you may not transfer your "Marks" to another person.

## 5. Grant And Consideration

- 5.1. Subject to the terms and conditions of this "Psychometric Testing Agreement", Blackblot grants to you a non-exclusive and non-transferable license to use the "Marks" solely in connection with the subject matter of the "Program". You or your agents may use the "Marks" on such promotional display and advertising materials which in your judgment are used to promote that you are providing "Program" related services. You may not use the "Marks" for any purposes that are not directly related to the provision of services which are unrelated to the "Program". You may not use the "Marks" of any "Program" unless you have completed the "Program" requirements for that particular "Program". It is your responsibility to ensure that any personal contact information about you is current and accurate.

## 6. Term And Termination

- 6.1. Term – This "Psychometric Testing Agreement" will commence on the date you electronically sign this document at the outset of the "Test", and will terminate as provided in this "Psychometric Testing Agreement". THIS PSYCHOMETRIC TESTING AGREEMENT WILL NOT TAKE EFFECT UNTIL ALL PROGRAM REQUIREMENTS HAVE BEEN MET, INCLUDING YOUR ACCEPTANCE OF THE TERMS OF THIS PSYCHOMETRIC TESTING AGREEMENT. If additional "Programs", "Tests", or "Tracks" will be made available, and if you later upgrade your status to include any other "Programs", "Tests", or "Tracks"; this "Psychometric Testing Agreement" will remain in effect and govern your right to use any new "Marks" and your obligation with respect to the use of those new "Marks". Blackblot retains the right to designate new marks in writing that will be included as "Marks" subject to this "Psychometric Testing Agreement".
- 6.2. Termination by Either Party – Either party may terminate this "Psychometric Testing Agreement" with or without cause, by giving thirty (30) calendar days or more prior written notice to the other party.
- 6.3. Termination by Blackblot – Without prejudice to any rights it may have under this "Psychometric Testing Agreement" or in law, equity, or otherwise, Blackblot may terminate this "Psychometric Testing Agreement" upon the occurrence of any one or more of the following events (called "Default"):
- 6.3.1. If you fail to perform any of your obligations under this "Psychometric Testing Agreement";
- 6.3.2. If you represent yourself as qualified to use the "Marks" or "Grade" designation without complying with the testing required under this "Psychometric Testing Agreement";
- 6.3.3. If any government agency or court finds that services provided by you are defective or improper in any manner or form or that you have engaged in any form of fraud, misrepresentation, or deception; or
- 6.3.4. If any actual or potential adverse publicity or other information about you, your provision of services, or your use of the "Marks"

causes Blackblot, in its sole judgment, to believe that Blackblot's reputation will be adversely affected.

- 6.4. Default Event – In the event of a "Default", Blackblot will give you written notice. In the event of a "Default" under the "Termination by Blackblot" section, Blackblot may immediately terminate this "Psychometric Testing Agreement" with no period for correction and without further notice. In the event of a "Default" under the "Termination by Blackblot" section, you will be given thirty (30) calendar days from receipt of notice in which to correct any "Default". If you fail to correct the "Default" within the notice period, this "Psychometric Testing Agreement" will automatically terminate on the last day of the notice period without further notice.
- 6.5. Effect of Termination – Upon termination of this "Psychometric Testing Agreement" for any reason, you must immediately cease all display, advertising, and other use of the "Marks" and you must return all badges or other trademark collateral to Blackblot. Upon termination, all rights granted under this "Psychometric Testing Agreement" will immediately and automatically revert to Blackblot.

## **7. Conduct Of Business**

- 7.1. You agree to (1) conduct business in a manner which reflects favorably at all times on the services provided by, goodwill and reputation of Blackblot; (2) avoid deceptive, misleading, or unethical practices which are or might be detrimental to Blackblot or its products; and (3) refrain from making any representations, warranties, or guarantees to customers that are inconsistent with the policies established by Blackblot or representing that any such representations, warranties, or guarantees are the representations, warranties, or guarantees of Blackblot. Without limiting the above, you agree to not misrepresent your status or your level of skill and knowledge related thereto.

## **8. Ownership**

- 8.1. No title to or ownership of the "Marks", the "Test", or of any software or proprietary technology or intellectual property is transferred to you. Blackblot owns and retains all title and ownership of all intellectual property rights in the Blackblot materials including all presentations, courseware, manuals, software, firmware, software master files on diskettes/CDs/DVDs, digital storage media of any kind, copies of software, documentation, related materials, the "Test", and all modifications to and derivative works from those items. Blackblot does not transfer any portion of such title and ownership, or any of the associated goodwill to you, and this "Psychometric Testing Agreement" should not be construed to grant you any right or license, whether by implication, estoppel, or otherwise, except as expressly provided. You agree to be bound by and observe the proprietary nature of the products acquired by reason of your testing under this "Psychometric Testing Agreement".

**9. Reservation Of Rights And Good Will**

9.1. Blackblot retains all rights not expressly conveyed to you by this "Psychometric Testing Agreement". You recognize the value of the publicity and goodwill associated with the "Marks" and acknowledge that the goodwill will exclusively inure to the benefit of, and belong to, Blackblot. You have no rights of any kind whatsoever with respect to the "Marks" licensed under this "Psychometric Testing Agreement" except to the extent of the license granted in this "Psychometric Testing Agreement".

**10. No Registration By You**

10.1. You agree not to file any new trademark, collective mark, service mark, certification mark, and/or trade name application(s), in any class and in any country, province or state, for any trademark, collective mark, service mark, certification mark, and/or trade name that, in Blackblot's opinion, is the same as, similar to, or that contains, in whole or in part, any or all of Blackblot's trade names, trademarks, collective marks, service marks, and/or certification marks, including, without limitation, the "Marks" licensed under this "Psychometric Testing Agreement". You agree not to register or use as your own any internet domain name which contains Blackblot's "Marks" or other trademarks in whole or in part or any other name which is confusingly similar thereto. This section will survive the expiration or other termination of this "Psychometric Testing Agreement".

**11. Protection Of Rights**

11.1. You agree to assist Blackblot, to the extent reasonably necessary and at Blackblot's expense, to protect or to obtain protection for any of Blackblot's rights to the "Marks". In addition, if at any time Blackblot requests that you discontinue using the "Marks" and/or substitute using a new or different mark, you will immediately cease use of the "Marks" and cooperate fully with Blackblot to ensure all legal obligations have been met with regards to use of the "Marks".

## **12. Indemnification By You**

12.1. You agree to indemnify and hold Blackblot harmless against any loss, liability, damage, cost or expense (including reasonable legal fees) arising out of any claims or suits made against Blackblot: (1) by reason of your performance or non-performance under this "Psychometric Testing Agreement"; (2) arising out of your use of the "Marks" in any manner whatsoever except in the form expressly licensed under this "Psychometric Testing Agreement"; and/or (3) for any personal injury, product liability, or other claim arising from the promotion and/or your provision of product management related services. If Blackblot seeks indemnification under this section, Blackblot will immediately notify you in writing of any claim or proceeding brought against it for which it seeks indemnification under this "Psychometric Testing Agreement". In no event may you enter into any third party agreements, which would in any manner whatsoever, affect the rights of, or bind, Blackblot in any manner, without the prior written consent of Blackblot.

## **13. Revision Of Terms**

13.1. Blackblot reserves the right to revise the "Psychometric Testing Agreement" terms from time to time. In the event of a revision, your signing or otherwise manifesting assent to a new "Psychometric Testing Agreement" may be a condition of continued "Grade".

## **14. General Provisions**

14.1. Governing Law and Venue – The formation, performance, construction, interpretation, or discharge of this "Psychometric Testing Agreement" will in all respects be governed by the law of the State of Israel (excluding its choice of law rules). Venue for any action will be proper either in the courts of the State of Israel.

14.2. Non-Waiver – No waiver of any right or remedy on one occasion by either party will be deemed a waiver of such right or remedy on any other occasion.

14.3. Assignment – Neither this "Psychometric Testing Agreement" nor any of your rights or obligations arising under this "Psychometric Testing Agreement" may be assigned or delegated without Blackblot's prior written consent. This "Psychometric Testing Agreement" is freely assignable by Blackblot and will be for the benefit of Blackblot's successors and assigns.

14.4. Independent Contractors – You acknowledge that you and Blackblot have no relationship of agency, partnership, employment, or a relationship of a hiring party to an independent contractor and you agree that you will not represent yourself as an agent or legal representative of Blackblot.

14.5. Compliance with Laws – You agree to comply, at your own expense, with all statutes, regulations, rules, ordinances, and orders of any governmental body, department, or agency which apply to or result from your rights and



obligations under this "Psychometric Testing Agreement" or your provision of product management services.

- 14.6. Modifications – Any modifications to the typewritten face of this "Psychometric Testing Agreement" will render it null and void. This "Psychometric Testing Agreement" will not be supplemented or modified by any course of dealing or usage of trade. Any modifications to this "Psychometric Testing Agreement" must be in writing and signed by both parties.

## **15. Pre-Test Consent**

- 15.1. Personal Responsibility – You agree that all work submitted by you in satisfaction of "Program" requirements (for example, "Test" taking, submission of exercises, etc.) will be entirely your own work. You will neither: (1) provide or accept improper assistance; nor (2) use unauthorized materials (collectively "Misconduct"), in attempting to satisfy "Program" requirements. You understand that if Blackblot or its agent determines that you have engaged in "Misconduct", Blackblot may revoke any "Grade" and rights previously granted to you, and may prohibit you from any further participation in any Blackblot program.
- 15.2. Testing Regulations – In taking any "Test", you will comply with all testing regulations including but not limited to testing regulations governing the materials that you may bring into the testing area and/or refer to during the "Test". You understand that you must wait at least two (2) days before attempting to re-take any "Test".
- 15.3. Nondisclosure – You understand and agree that the content of all tests and any "Test" materials are proprietary and confidential information of Blackblot, and you agree not to disclose or share any of the content of these materials. In addition, you will not ask for, write (in any media), publish, or otherwise disclose any "Test" questions or answers. You understand that the content of the "Test" or any portion of it may not be reproduced, downloaded, disseminated, published, or transferred in any form or by any means. You further agree and acknowledge that Blackblot, in addition to any other remedy it may have, may enforce your obligations not to disclose or duplicate by obtaining temporary, preliminary, or permanent injunctive relief, and that the court of the State of Israel, is a court that has jurisdiction to grant those types of injunctions against you. That court or any other court of competent jurisdiction may issue those types of injunctions without the need to prove the lack of an adequate remedy at law, or irreparable injury, or require the posting of any form of injunction bond.
- 15.4. Commercial Exploitation – The content of the "Test" or any portion of it may not be reproduced, duplicated, copied, sold, resold, or otherwise exploited for any commercial purpose. Prohibited is the resale or commercial use of the content of the "Test" or any of its supporting documentation; including and not limited to processes, procedures, tools, guidelines, agreements, terminology, listings, descriptions, or prices; or

any derivative of its contents; for the benefit of any person or entity other than Blackblot, unless done so with the prior written notice from Blackblot.

- 15.5. Data Privacy – Blackblot respects all privacy concerns and rights. Blackblot will collect, store, process, and use data collected from this "Test" in order to process and validate your "Test", and may contact you with "Test" satisfaction inquiries. Blackblot will use its best efforts to ensure that the information collected will not be distributed outside Blackblot; however, Blackblot may share your personal data with those companies with which Blackblot has contracted to perform any, or all, of these testing services for the purposes listed above and to determine if you have passed the "Test". Blackblot will comply with the provisions and principles of the applicable data protection legislation, if any, and makes reasonable efforts to contract with companies that also value data protection and meet Blackblot's standards. Data may be transferred from your location to Blackblot or its affiliated companies. "Test" information provided to Blackblot in this context will be gathered and transmitted to a secure, password-protected, database controlled by Blackblot and its authorized agents and accessible by authorized persons only. Your information will be stored only for the length of time necessary to complete the testing process listed above and in compliance with related record retention regulations.
- 15.6. Before Blackblot will grant a "Grade" under any Blackblot program, you must consent to the terms and conditions of the "Psychometric Testing Agreement". By taking any "Test" belonging to any Blackblot "Program", you are consenting to the terms and conditions of the "Psychometric Testing Agreement".
- 15.7. Consenting will be done electronically when you take a "Test". At the outset and as part of the test-taking process, a screen will appear and display a pre-test notice. By proceeding with the "Test" following the pre-test notice, you are stating that you have read and understand and agree to the terms and conditions of the "Psychometric Testing Agreement". Selecting the affirmative option on the screen will allow you to proceed with taking the actual "Test". Pre-test notice reading time does not count towards the actual "Test" which is time-constrained. If you do not agree with the terms and conditions of the "Psychometric Testing Agreement" then do not proceed with registering or taking the "Test". You will not obtain a refund of your "Test" fee.
- 15.8. BY SELECTING THE "START TEST" OPTION IN THE PSYCHOMETRIC TEST YOU STATE THAT YOU HAVE READ AND UNDERSTAND THE PSYCHOMETRIC TESTING AGREEMENT AND YOU AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

## **16. General Disclaimer**

- 16.1. Blackblot does not guarantee the accuracy, completeness, efficacy, timeliness, or correct sequencing of all information contained in any "Program", "Test", and "Track". No one should rely on the accuracy, completeness, efficacy and timeliness of such information. Reference

herein and within any "Program", to any specific product, process, or service by trade name, trademark, service mark, manufacturer, or otherwise does not constitute or imply endorsement, recommendation or favoring by Blackblot.

- 16.2. Blackblot (including its employees and agents) assumes no responsibility for consequences resulting from the use of the information herein, or from use of the information obtained, or in any respect for the content of such information, including (but not limited to) errors or omissions, the accuracy or reasonableness of factual or scientific assumptions, studies or conclusions, the defamatory nature of statements, ownership of copyright or other intellectual property rights, and the violation of property, privacy, or personal rights of others.
- 16.3. Blackblot is not responsible for, and expressly disclaims all liability for, damages of any kind arising out of use, reference to, or reliance on such information. No guarantees or warranties, including (but not limited to) any express or implied warranties of merchantability or fitness for a particular use or purpose, are made by the Blackblot with respect to such information.