

**PLATFORM LICENCE TERMS  
SERVICE MODULE 1  
VERSION: 3.0  
VERSION DATE: 20TH DECEMBER 2021**

Thomas and the Account Holder have entered into master terms and conditions for the provision to the Account Holder of certain solutions (the "Master Agreement"). Pursuant to this Master Agreement, the Account Holder is entering into an Order for the purchase of specific Solutions, in respect of which these Service Module terms and conditions (the "Service Module Terms") shall apply.

These Service Module Terms shall apply to and govern the Account Holder's use of the Thomas Platform (as defined in the Master Agreement). These Service Module Terms amend the terms of the Master Agreement, except that in

the event of any conflict, ambiguity or inconsistency between the Order and these Service Module Terms, the terms of the applicable Order shall take precedence accordingly.

## 1. DEFINITIONS

**1.1** Any reference to capitalised terms in these Service Module Terms will have the meaning given to them in the Master Agreement unless otherwise defined below.

"Consultancy Services" means the Solution and related services provided by Thomas pursuant to Service Module 5 (Consultancy Services);

"Gold Platform Licence Cover" means the level of Account Holder access to the Thomas Platform as set out under the title Gold in SCHEDULE 1;

"Initial Platform Licence Period" has the meaning set out in clause 4.1.1;

"Inspection Parties" has the meaning set out in clause 3.4;

"Integration Services" means the Solution and related services provided by Thomas pursuant to Service Module 7 (Integration Services);

"Licensed Consulting and Integration Services" means the Consultancy Services and/or Integration Services which the Account Holder can select if it is included within the relevant Platform Licence cover (as may be further set out in SCHEDULE 1) in accordance with these Service Module Terms;

"Licensed Training Services" means any Training Course the Account Holder can select if it is included within the relevant Platform Licence cover as set out in SCHEDULE 1 (such Training Course being provided pursuant to Service Module 4 (Training Services));

"Online Services" means the Online Unit Purchase Services and/or the Online Subscription Services, as may be applicable in the circumstances;

"Online Subscription Services" means the subscription and related services provided by Thomas pursuant to Service Module 3 (Online Services - Subscription Terms);

"Online Unit Purchase Services" means unit purchase and related services provided by Thomas pursuant to Service Module 2 (Online Services - Unit Purchases);

"Platform Licence" means the licence granted under clause 2 for use of the Thomas Platform and related Deliverables on the basis of either Silver, Gold or Platinum Platform Licence Cover;

"Platform Licence Fee" has the meaning set out in clause 8;

"Platform Licence Period" means a period of twelve (12) months, being either the Initial Platform Licence Period or any subsequent Renewed Platform Licence Period;

"Platform Licence Term" has the meaning set out in clause 4.1;

"Platinum Platform Licence Cover" means the level of Account Holder access to the Thomas Platform as set out under the heading Platinum in SCHEDULE 1;

"Renewed Platform Licence Period" has the meaning set out in clause 4.1.2;

"Silver Platform Licence Cover" means the level of Account Holder access as set out under the heading Silver in Schedule I; and

"Termination Notice" has the meaning set out in clause 10.1.1

## 2. PLATFORM USERS

**2.1** In respect of each Platform Licence, the Account Holder shall appoint Platform Users who shall be permitted to access the Thomas Platform and be provided with the Online Service, Documentation and/or Deliverables in accordance with the Platform User's specified Identity and subject always to Thomas' prior approval of such appointment and allocated Identity.

## 3. PLATFORM LICENCE

**3.1** Subject to the payment of the relevant Platform Licence Fee, Thomas grants to the Account Holder a non-exclusive, non-transferable licence for Platform Users to access the Thomas Platform and related Documentation and Deliverables for the Account Holder's internal business purposes during the Platform Licence Period in accordance with these Service Module Terms.

**3.2** The Account Holder must have the benefit of a Platform Licence in order to access the Thomas Platform. Any Account Holder without a current Platform Licence may not access the Thomas Platform.

**3.3** Provided the Account Holder is granted the benefit of a Platform Licence and access to the Thomas Platform in accordance with these Service Module Terms, the Account Holder will be eligible to purchase Online Services by way of either:

3.3.1. Unit purchase, in accordance with and pursuant to Service Module 2 (Online Services - Unit Purchases); or

3.3.2. Subscription, in accordance with and pursuant to Service Module 3 (Online Services - Subscription Terms).

For the avoidance of doubt, the Account Holder may only purchase any Online Services from Thomas (including but not limited to any Assessments) by executing an Order for such Online Services pursuant to Service Module 2 (Online Services - Unit Purchases) or Service Module 3 (Online Services - Subscription Terms) as may be applicable in the circumstances.

**3.4** During the Term and following the termination or expiry of these Service Module Terms, the Account Holder shall grant to Thomas and/or its employees, auditors, representatives or agents (the "Inspection Parties") at all reasonable times during normal business hours and on reasonable notice in the circumstances (which may be a very short period where the request is urgent), effective access to all information relating to:

3.4.1. the use of the Thomas Platform (including any Platform Licence that has been granted); and

3.4.2. the provision of the Online Service and the receipt of any Documentation and Deliverables, including the right of access to and to carry out on-site inspections at any of the Account Holder premises, the right of access to systems, personnel and any records as Thomas and/or the Inspection Parties may reasonably require in order to verify that the use of the Thomas Platform (including any Platform Licence that has been granted) and/or the use or receipt of the Online Service, Documentation and Deliverables is in accordance with these Service Module Terms and the relevant Order(s).

- 3.5** If any audit referred to in clause 3.4 demonstrates:
- 3.5.1. any breach of an Order and/or these Service Module Terms by the Account Holder;
  - 3.5.2. that Thomas Platform access has been provided to any individual who is not the Account Holder or a Platform User; or
  - 3.5.3. an under-payment of the Fees that should have been due from the Account Holder for the period covered by the audit, then without prejudice to Thomas' other rights or remedies under the Master Agreement and/or these Service Module Terms;
  - 3.5.4. Thomas shall be entitled to disable the Account Holder's Thomas Platform access immediately if the Account Holder does not rectify the breach identified pursuant to clause 3.5.1 or 3.5.2 immediately upon request; and
  - 3.5.5. the Account Holder shall pay to Thomas an amount equal to any identified underpayment of the Fees pursuant to clause 3.5.3 within two (2) weeks of the request for payment.

#### **4. PLATFORM LICENCE TERM, RENEWALS AND EXPIRY**

- 4.1** The term of a Platform Licence shall:
- 4.1.1. commence from the date specified in the relevant Order and/or invoice relating to the applicable Order and shall continue for twelve (12) months ("**Initial Platform Licence Period**"); and
  - 4.1.2. subject to clause 4.1.1, automatically renew for further twelve (12) month periods ("**Renewed Platform Licence Period**"), at the end of the Initial Platform Licence Period or a Renewed Platform Licence Term as may be applicable, (the "**Platform Licence Term**").
- 4.2** The Account Holder must notify Thomas of its intention not to renew the Platform Licence no later than thirty (30) days before the end of the Initial Platform Licence Period or the relevant Renewed Platform Licence Period, as the case may be and in which case:
- 4.2.1. the Platform Licence; and
  - 4.2.2. subject to clause 4.2.3.2, any Online Services (including any Subscription or unexpired Units) which the Account Holder has purchased, will automatically expire as at the end of the relevant Initial Platform Licence Period or Renewed Platform Licence Period (as applicable).
- If the Account Holder notifies Thomas of its intention not to renew its Platform Licence in accordance with clause 4.2 but subsequently places an Order with Thomas for another Platform Licence ("**New Platform Licence**"):
- 4.2.3. if such Order is placed within three (3) months of the end of the Account Holder's last Platform Licence Period:
    - 4.2.3.1. the new Platform Licence Period shall be effective from the end of the previous Platform Licence Period and be classed as a Renewed Platform Licence Period;
    - 4.2.3.2. such New Platform Licence shall include any unexpired Units (but, for the avoidance of doubt, no other Online Services) which were purchased by the Account Holder in respect of the previous Platform Licence Period; or
  - 4.2.4. if such Order is placed more than three (3) months but less than twelve (12) months from the end of the Account Holder's last Platform Licence Period:
    - 4.2.4.1. the new Platform Licence Period shall be effective from the date set out in the Order and be classed as a New Platform Licence; and
    - 4.2.4.2. such New Platform Licence will be set up as if the Account Holder were an entirely new customer but will still grant the Account Holder access to historic Documentation, Content and/or Deliverables (including Assessment Responses) relating to the previous Platform Licence until the expiry of twelve (12) months from the end of the Account Holder's last Platform Licence Period;
    - 4.2.4.3. such Platform shall not include any Online Services (including any unexpired Units) which were purchased by the Account Holder in respect of the previous Platform Licence Period; or
  - 4.2.5. if such Order is placed more than twelve (12) months from the end of the Account Holder's last Platform Licence Period:
    - 4.2.5.1. the new Platform Licence Period shall be effective from the date set out in the Order and classed as a New Platform Licence;
    - 4.2.5.2. such New Platform Licence will be set up as if the Account Holder were an entirely new customer and will not grant the Account Holder access to any reconstituted or historic Documentation, Content and/or Deliverables (including any Assessment Responses or related data) relating to the previous Platform Licence; and
    - 4.2.5.3. for the avoidance of doubt, such New Platform Licence shall not include any Online services (including any unexpired Units) which were purchased by the Account Holder in respect of the previous Platform Licence Period.
- 4.3** If a Platform Licence is terminated for any reason other than as set out in clause 4.2 (including pursuant to clause 10.1 and/or pursuant to the terms of the Master Agreement), the Platform Licence and any Online Services (including any Subscription or unexpired Units) shall automatically expire as at the date of such termination.
- 4.4** If the Account Holder has its access to the Thomas Platform and/or Platform Licence disabled or suspended by Thomas in accordance with clauses 3.5.4 or 8.3 respectively, or if an Order made pursuant to these Service Module Terms is otherwise suspended in accordance with the Master Agreement, any Online Services (including any Subscription or unused Units which the Account Holder has purchased) will automatically be disabled or suspended for the same amount of time of disablement or suspension relating to the Thomas Platform and/or Platform Licence as applicable.

#### **5. PLATFORM LICENCE AMENDMENTS**

##### **5.1 Platform Licence Upgrades**

- 5.1.1. An Account Holder may upgrade a Platform Licence to a higher level at any time during the Platform Licence Period.
- 5.1.2. In the event of a Platform Licence upgrade pursuant to clause 5.1.1:
  - 5.1.2.1. subject to clause 5.1.2.2, the Account Holder's Platform Licence Fee for the existing Platform Licence will be set-off on a pro-rated basis against the full Platform Licence Fee for the new Platform Licence. The amounts outstanding after such set-off shall be payable by the Account Holder and Thomas shall issue an invoice for the same;
  - 5.1.2.2. if the Account Holder has used any of their allotted Licensed Training Services and/ or Licensed Consulting and Integration Services prior to upgrading the Platform Licence, clause shall not apply and the Account Holder will be liable to pay the full Platform Licence Fee for the new Platform Licence and Thomas shall issue an invoice for the same.
- 5.1.3. The Platform Licence Period in respect of the new Platform Licence will commence on the date Thomas issues an invoice in respect of the monies owed by the Account Holder for the new Platform Licence Fee.

##### **5.2 Platform Licence Downgrades**

- 5.2.1. If the Account Holder purchases a Gold or Platinum Platform Licence, they may downgrade to a lower level by giving not less than thirty (30) days' written notice to Thomas prior to the end of the relevant Platform Licence Period, failing which the Platform Licence Period will automatically renew at the level purchased in the prior Platform Licence Period. Any other Platform Licence downgrades are not permitted during an existing Platform Licence Period.

#### **6. USE OF THE THOMAS PLATFORM AND ONLINE SERVICES**

##### **6.1 Thomas Obligations**

- 6.1.1. During the Term, Thomas shall provide the Account Holder with access to the Thomas Platform, Online Services, relevant Documentation and Deliverables subject to these Service Module Terms.
- 6.1.2. Thomas shall provide the Online Services using reasonable care and skill. Without prejudice to clauses 15.1, 15.2 and 15.3 (Limitation of Liability) of the Master Agreement, in the event of any breach of this clause 6.1.2, Thomas will, at its sole expense, use commercially reasonable endeavours to resupply the Online Services in a manner which conforms to clause 6.1.2. This shall be the Account Holder's sole and exclusive remedy for such breach.

##### **6.2 Key Performance Indicators**

- 6.2.1. Without prejudice to clause 13.2 (Disclaimers) of the Master Agreement, Thomas shall use reasonable endeavours to ensure the following key performance indicator is met with regard to availability of the Thomas Platform:
  - 6.2.1.1. the Thomas Platform shall be available twenty-four (24) hours a day, seven (7) days a week, provided that such availability shall exclude any planned or unplanned maintenance on the Thomas Platform which Thomas may carry out at any time and whereby Thomas shall use reasonable endeavours to provide the Account Holder of prior notice of such unavailability.

### 6.3 General

- 6.3.1. Unless and only to the extent set out in a relevant Service Module Schedule or agreed in advance by Thomas in writing:
- 6.3.1.1. the Account Holder's access to the Thomas Platform and related Documentation and Deliverables provided as part of a Platform Licence will expire at the end of the relevant Platform Licence Period; and
  - 6.3.1.2. any unused portion of the Licensed Consulting and Integration Services and/or Licensed Training Services cannot be rolled over into any subsequent Platform Licence Period or be refunded or exchanged.

## 7. PLATFORM LICENCE COVER

**7.1** Subject to the remainder of this clause 7 and SCHEDULE 1 of these Service Module Terms which set out the specific services and other benefits that are included within a particular level of Platform Licence cover (whether this is Silver, Gold or Platinum), and as may be updated from time to time by Thomas.

### 7.2 Gold and Platinum Platform Licences

- 7.2.1. Subject to the remainder of this clause 7 and in respect of Gold Platform Licence Cover and Platinum Platform Licence Cover only, if the Account Holder is entitled under SCHEDULE 1 to benefit from the:
- 7.2.1.1. Licensed Training Services; or
  - 7.2.1.2. Licensed Consulting and Integration Services, the Account Holder may request such additional services by making contact with their usual Thomas account manager via email or telephone, provided that the Account Holder acknowledges that, unless otherwise provided under SCHEDULE 1:
    - 7.2.1.3. it may only request to be provided with additional Licensed Training Services under clause 7.2.1.1 if the Account Holder has at least one (1) Thomas-trained practitioner within its business (paid for separately in accordance with clause 8.1.2); and
    - 7.2.1.4. where the Account Holder makes a request under clause 7.2.1.2, it shall only be permitted to utilise one of either the Consultancy Services or the Integration Services (as per SCHEDULE 1) per Platform Licence Period.
- 7.2.2. Unless otherwise set out in SCHEDULE 1, clause 7.2.1 is subject to:
- 7.2.2.1. the Account Holder giving Thomas as much notice as possible in respect of a request made under clause 7.2.1, but in any event no less than twenty (20) business days. For the avoidance of doubt, the parties acknowledge and accept that the notice period is required in order for Thomas to process a request to add the relevant services to the Account Holder's Platform Licence and does not give any indication as to the timescales under which the applicable services will be performed;
  - 7.2.2.2. the Account Holder booking and completing any such additional services during the relevant Platform Licence Period;
  - 7.2.2.3. in respect of any ordered Licensed Training Services, full compliance by the Account Holder with Service Module 4 (Training Services); and
  - 7.2.2.4. in respect of any ordered Licensed Consulting and Integration Services, full compliance by the Account Holder with Service Module 5 (Consultancy Services) and/ or Service Module 7 (Integration Services) as may be applicable.
- 7.2.3. Thomas will use reasonable endeavours to accommodate a request made by the Account Holder pursuant to clause 7.2.1, however the Account Holder acknowledges and agrees that this may not always be possible and it shall not be entitled to hold Thomas liable for any delay or unavailability.

## 8. FEES

**8.1** The Fees for the Platform Licence and Online Services provided pursuant to these Service Module Terms shall consist of and be calculated as follows, unless provided otherwise in the applicable Order:

- 8.1.1. an annual sum payable in respect of the Platform Licence (for either Silver, Gold or Platinum Platform Licence Cover as the case may be) for each Platform Licence Period, which shall be chargeable in accordance with SCHEDULE 1, as may be updated and/or amended from time to time (the "Platform Licence Fee"); and
- 8.1.2. where Training Services are not included within the relevant Platform Licence cover in accordance with clause 8.1, such Training Services shall be chargeable in accordance with Thomas' then-current price list, and as further set out in the relevant Order.

**8.2** In respect of these Service Module Terms, clause 7.3 (Fees and Payment) of the Master Agreement shall not apply. Instead, the Fees payable under and in accordance with these Service Module Terms, shall be payable at least fourteen (14) days in advance of each Platform Licence Period.

**8.3** In addition to, and without prejudice to, the terms set out in clause 7 (Fees and Payment) of the Master Agreement, if the Platform Licence Fee or any other amount payable in connection with these Service Module Terms are not paid in full when due, Thomas reserves the right to suspend the:

- 8.3.1. Account Holder's access to the Thomas Platform; and/or
- 8.3.2. provision of the Online Services, Documentation and/or any Deliverables or any part of them to the Account Holder.

**8.4** Thomas does not guarantee the integrity of any Content in the event it suspends access to the Online Services, Documentation, Deliverables and/or the Thomas Platform in accordance with clause 8.3.

## 9. LIABILITY

**9.1** Subject to clauses 15.1 and 15.2 (Limitation of Liability) of the Master Agreement, in the event of any loss or damage to the Account Holder's Content which is inputted into the Thomas Platform, the Account Holder's sole and exclusive remedy shall be for Thomas to use reasonable endeavours to restore the lost or damaged Content from the latest back-up of such Content maintained by Thomas, provided that Thomas shall not be responsible for any loss, destruction, alteration or disclosure of Content caused:

- 9.1.1. by any third party (except those third parties sub-contracted by Thomas to perform services related to Content maintenance and back-up); or
- 9.1.2. as a result of any breach by the Account Holder of the Master Agreement or these Service Module Terms.

**9.2** The Account Holder assumes sole responsibility for any conclusions drawn from results obtained from use of the Thomas Platform, the Online Service, the Documentation and/or the Deliverables (including any Assessments).

## 10. ADDITIONAL TERM AND TERMINATION RIGHTS

**10.1** In addition, and without prejudice to, the term and termination rights set out in clause 16 (Term and Termination) of the Master Agreement:








- 10.1.1. Thomas may terminate a Platform Licence at any time upon sixty (60) days' written notice ("Termination Notice") to the Account Holder.
- 10.1.2. In the event Thomas serves a Termination Notice, it shall refund pre-paid Platform Licence Fees on a pro-rated basis to be calculated as follows:  

$$\text{Refund} = (\text{Platform Licence Fee} / 365) \times \text{remaining days}^*$$

\* meaning the number of days remaining in the then-current Platform Licence Period starting from the end of the Termination Notice

SCHEDULE 1

PLATFORM LICENCE TERMS

Differentiators	Silver	Gold	Platinum
 Hub access	✓	✓	✓
 Unlimited users	✓	✓	✓
 Tech support	✓	✓	✓
 Secure storage	✓	✓	✓
 In-person sales consultant session	New: Onboarding Renewal: User workshop	New: Onboarding Renewal: User workshop	New: Onboarding Renewal: User workshop
 Accreditation training		1 digital training place*	1 digital training place*
 Consulting services			One of the two below options: 1. A half-day in-house workshop on personal or team behavioural awareness. 2. Set up of a Thomas Engage survey

\*where a digital course is not available, classroom training will be offered.