

## MASTER TERMS AND CONDITIONS

### Introduction

Please read the terms and conditions of these Terms carefully. These Terms govern the Account Holder's purchase and use of Thomas' Solutions (as defined below). Please print a copy of these Terms for future reference and please check the Thomas Website (as defined in "APPENDIX I") periodically for any amendments to these Terms, which Thomas reserves the right to make from time to time.

By accepting these Terms, either by clicking a box indicating the Account Holder's acceptance, executing an Order that references these Terms or by continuing to use the Solution(s), the Account Holder agrees to these Terms. If the Account Holder is entering into these Terms on behalf of a company or other legal entity, the Account Holder represents that it has the authority to bind such entity to these Terms, in which case the term "Account Holder" shall refer to both such entity and the individual representing it in their personal capacity. In such circumstances two separate contracts shall exist, one where the Account Holder is the entity, and one where the Account Holder is an individual acting in their personal capacity. If the Account Holder does not have such authority, or if the Account Holder does not agree with these Terms, the Account Holder must not accept these Terms and may not use or receive the Solutions and/or Deliverables.

### 1. STRUCTURE AND SCOPE OF THE AGREEMENT

1.1 This Agreement creates a contractual framework between the Account Holder and Thomas under which:

- 1.1.1 the Account Holder enters into the Terms, under which it can execute Orders in order to purchase Solutions and related services and/or Deliverables; and
- 1.1.2 Thomas agrees the terms on which it shall provide such Solutions and related services and/or Deliverables.

1.2 Each Solution specified to be provided under an applicable Order shall be provided in accordance with the relevant Solution-specific terms set out in Service Modules, whereby each such applicable Service Module shall form a part of the relevant Order; whether by directing the Account Holder to electronic copies of the applicable Service Module(s) or otherwise.

1.3 In the event of any conflict or ambiguity, the order of precedence for the Agreement shall be as follows:

- 1.3.1 the applicable Order;
- 1.3.2 the applicable Service Module;
- 1.3.3 the body of these Terms;
- 1.3.4 the appendices to these Terms;
- 1.3.5 the Documentation; and
- 1.3.6 any other document expressly referred to in these Terms.

1.4 Under the Agreement, the Account Holder and Thomas may enter into one or more Orders for the provision of Solutions and related Deliverables.

1.5 During the Term the Account Holder may order the provision of Solutions from Thomas by:

- 1.5.1 entering into an online order by clicking acceptance of the terms relevant to the purchase of the applicable Solution(s); or
- 1.5.2 entering into a telephone order by confirming its acceptance in writing of the terms relevant to the purchase of the applicable Solution(s); and/or
- 1.5.3 executing an Order Form for the purchase of the applicable Solution(s) which may set out the parameters, specifications and any additional terms applicable to the provision of such Solution(s); or
- 1.5.4 using any other channel or method to agree the terms on which the Account Holder shall purchase the applicable Solution(s),

1.5.5 (each, an "Order"), and whereby any such Order shall append or reference any applicable Service Module relating to such Solution(s).

1.6 An Order shall, upon execution, become incorporated into, and subject to, the Agreement in respect of the Solution(s) and related Deliverables set out therein, save as may expressly be specified to the contrary in the applicable Order. Once an Order is agreed by the parties, to be valid and effective it must be signed by each of the parties or otherwise accepted by the parties, unless Thomas waives this requirement by providing the Account Holder with a written order confirmation or issuing an invoice in respect of the applicable order.

1.7 Neither party shall be obliged by this Agreement to enter into any Order. Thomas shall not be obliged to deliver or make available any Solution and/or Deliverable to the Account Holder and the Account Holder is not obliged to pay any Fees to Thomas, except to the extent provided in a Service Module or specified in an Order.

### 2. PROVISION OF SOLUTIONS

2.1 Thomas will provide, and the Account Holder will receive and have use of, the Solutions and related Deliverables in accordance with the Agreement for the Term or Order Term (as may be applicable), whereby:

- 2.1.1 each Solution and/or Deliverable specified to be provided under an applicable Order shall be provided in accordance with the relevant Service Module(s) applicable to such Order and substantially in accordance with the Documentation; and
- 2.1.2 Thomas shall provide, deliver or otherwise make available such Solution(s) and/or Deliverable(s) with reasonable skill and care, in a timely manner and in accordance with the other provisions of this Agreement.

2.2 Notwithstanding clause 2.1, Thomas:

- 2.2.1 does not warrant that the Account Holder's use of the Solutions and/or Deliverables will be uninterrupted or error-free; or that the Solutions, Deliverables and/or Documentation will meet the Account Holder's requirements; and/or
- 2.2.2 is not responsible for any delays, delivery failures or any other loss or damage resulting from the transfer of data over communication networks and facilities, including the internet, and the Account Holder acknowledges that the Solutions, Deliverables and Documentation may be subject to limitations, delays and other problems inherent in the use of such technology and data services.

2.3 Thomas warrants that it has and will maintain all applicable licences, consents and permissions necessary for the performance of its obligations under these Terms and any Order (including any Service Module).

### 3. USE OF SOLUTIONS

#### 3.1 Account Holder Obligations

3.1.1 The Account Holder must comply with the Account Holder Obligations as set out in this clause 3.1 and as may be specified in a Service Module and/or a particular Order (the "Account Holder Obligations") for the duration of the Term or the Order Term (as applicable), in a timely, accurate and complete manner and in accordance with these Terms and/or any relevant Order. In the event of any delays in the Account Holder's provision of such assistance, Thomas may adjust any agreed timetable or delivery schedule relating to the provision of the Solution(s) and/or Deliverable(s) as reasonably necessary.

3.1.2 Except to the extent expressly set out in an Order, the Account Holder shall:

- 3.1.2.1 provide to Thomas:
  - (a) all necessary co-operation in relation to these Terms and any Order; and
  - (b) all necessary access to such information as may be

required by Thomas, in order to provide the Solutions, including but not limited to Account Holder Data, security access information and configuration services;

- 3.1.2.2** comply with all Applicable Regulations with respect to the Account Holder's activities under the Agreement;
- 3.1.2.3** carry out all other Account Holder Obligations in a timely and efficient manner;
- 3.1.2.4** use the Solutions, Deliverables and/or Documentation in accordance with the Agreement;
- 3.1.2.5** ensure that the Account Holder's network and systems comply with the relevant specifications provided by Thomas from time to time;
- 3.1.2.6** be solely responsible for procuring and maintaining its network connections and telecommunications links from the Account Holder's systems to Thomas' infrastructure systems, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Account Holder's network connections or telecommunications links or caused by the internet;
- 3.1.2.7** be responsible for the accuracy, quality and legality of Account Holder Data and the means by which the Account Holder acquires Account Holder Data;
- 3.1.2.8** use commercially reasonable efforts to prevent unauthorised access to or use of Solutions and/or Deliverables, and notify Thomas immediately of any such unauthorised access or use;
- 3.1.2.9** use Solutions and Deliverables only in accordance with these Terms, Documentation, Orders and Applicable Regulations;
- 3.1.2.10** comply with any terms of service of any Non-Thomas Applications with which the Account Holder uses Solutions and/or Deliverables;
- 3.1.2.11** with respect to Assessment Responses in particular:
  - (a) not use such Assessment Responses in isolation in order to guide or inform a decision; and
  - (b) always use such Assessment Responses in accordance with best industry practice.

**3.1.3** As existing Solutions are varied and new Solutions are added and/or revised, any Account Holder Obligations related thereto will be determined and included within the relevant Order Form, as applicable by Thomas (acting reasonably).

## 3.2 Use Restrictions

**3.2.1** Through the Account Holder's use of the Solutions and/or Deliverables, the Account Holder must not upload, download, access, store, distribute or transmit any Malicious Code or any other material (including Account Holder Data) that is, or appears to be:

- 3.2.1.1** unlawful under the Applicable Regulations;
- 3.2.1.2** in any way harmful, threatening, harassing, defamatory, libellous, invasive of the privacy of another; or obscene (including without limitation any images or depictions of child abuse, child pornography, or minors engaged in sexual conduct or explicitly sexual situations);
- 3.2.1.3** insider information, or any other proprietary or confidential information;
- 3.2.1.4** an infringement of any Intellectual Property Rights; or
- 3.2.1.5** an advertisement or solicitation for any products or services.

**3.2.2** The Account Holder agrees to indemnify and hold harmless Thomas from any liability incurred as the result of the Account Holder's violation of clause 3.2.1.

**3.2.3** The Account Holder must not:

- 3.2.3.1** knowingly withhold information which may affect Thomas' ability to provide any of the Solutions and/or Deliverables to the Account Holder or to others (including other Platform Users), or the security or integrity of any of the Solutions and/or

Deliverables;

- 3.2.3.2** use or attempt to use any automated program to access any Solution and/or Deliverable, or to search, display, or obtain links to any part of a Solution and/or Deliverable. Any such use or attempted use of an automated program shall be misuse of the applicable Solution(s) and/or Deliverable(s). Obtaining access to any part of a Solution and/or Deliverable by means of any such automated program is strictly unauthorised;
- 3.2.3.3** use any Solution and/or Deliverable to impersonate any person, or to misrepresent the Account Holder's or any other Platform User's identity;
- 3.2.3.4** create, transmit or introduce into any Solution and/or Deliverable any programs, viruses, malware or other type of malicious software, or links to such software, that could disrupt or harm the proper operation of such Solution and/or Deliverable or incite another to do so;
- 3.2.3.5** copy any Documentation for any purpose without the express prior written permission from the copyright owner of such Documentation;
- 3.2.3.6** engage in sending unsolicited messages to any number or users or via the internet by using any Solution and/or Deliverable;
- 3.2.3.7** copy, reverse engineer, decompile, disassemble or modify a Solution and/or Deliverable or any part, feature, function or user interface thereof, or otherwise reduce to human-perceivable form all or any part of any Solution and/or Deliverable (except to the extent permitted pursuant by Applicable Regulations);
- 3.2.3.8** circumvent, or attempt to circumvent, any limitations that Thomas imposes on the use of any Solution and/or Deliverable;
- 3.2.3.9** unless expressly authorised by Thomas in writing, prove, scan or test the vulnerability of any Thomas system or network;
- 3.2.3.10** engage in abusive or excessive usage of any Solution and/or Deliverable, which is usage significantly in excess of average usage patterns that adversely affects the speed, responsiveness, stability, availability, or functionality of any Solution and/or Deliverable for other users;
- 3.2.3.11** attempt to use any Solution and/or Deliverable to infringe the Intellectual Property Rights of others, or to commit an unlawful activity;
- 3.2.3.12** make any Solution and/or Deliverable available to, or use any Solution and/or Deliverable for the benefit of, anyone other than the Account Holder, unless and to the extent expressly stated otherwise in an Order or the Documentation;
- 3.2.3.13** (unless otherwise agreed in writing by Thomas or unless Thomas otherwise waives this requirement) lend, sell, resell, license, sublicense, distribute, make available, rent or lease any Solution and/or Deliverable, or include any Solution and/or Deliverable in a service bureau or outsourcing offering;
- 3.2.3.14** access any Solution and/or Deliverable in order to build a competitive solution or service or to benchmark with a non-Thomas solution or service;
- 3.2.3.15** (unless otherwise agreed in writing by Thomas or unless Thomas otherwise waives this requirement) licence, sell, rent, transfer, assign, distribute, display, disclose or otherwise commercially exploit or otherwise make any Solution and/or Deliverable available to any third party;
- 3.2.3.16** attempt to obtain, or assist third parties in obtaining, access to any Solution and/or Deliverable, other than as permitted in these Terms;
- 3.2.3.17** interfere with or disrupt the integrity or performance of any Solution and/or Deliverable or third-party data contained therein;
- 3.2.3.18** attempt to gain unauthorised access to any Solution and/or Deliverable or its related systems or networks;

- 3.2.3.19 remove any Thomas or third-party names, trade marks, copyright notices or other proprietary notices;
- 3.2.3.20 use any Solution and/or Deliverable in any way that may violate rights of publicity or privacy of any individual whose personally identifiable data is retrieved; or
- 3.2.3.21 use any Solution, Deliverables and/or the Documentation (whether wholly or in part) in the Account Holder's own products or services or create any derived data or products utilising any of the same.

#### 4. PLATFORM USERS

4.1 In respect of each Platform Licence granted in accordance with Service Module 1 (Platform Licence Terms), the Account Holder shall appoint Thomas Platform users who shall be permitted to access the Thomas Platform and be provided with Solutions, Deliverables and/or Documentation in accordance with the Platform User's specified Identity, and whereby any appointed Platform User may only access the Thomas Platform, Solutions, Deliverables and related services strictly in accordance with the terms of this Agreement and the Account Holder's instructions.

#### 5. LICENCE GRANT

##### 5.1 Licences

5.1.1 Subject to clause 5.1.2, Thomas grants to the Account Holder:

- 5.1.1.1 a non-exclusive, non-transferable, limited-term, revocable licence to use the Solutions, Deliverables and/or Assessment Data during the Term and/or the Order Term (as applicable) solely for the relevant Permitted Purpose(s); and
- 5.1.1.2 strictly and only to the extent required by the Account Holder to use the Deliverables and/or Assessment Data, and to receive the Solutions, a limited-term, non-exclusive, non-assignable, royalty-free, revocable licence to use Thomas Background IPRs as necessary for this limited purpose.

5.1.2 The licence granted under clause 5.1.1 above shall apply other than to the extent that additional licence(s) are required by and granted in accordance with any of the Service Modules. For the avoidance of doubt:

- 5.1.2.1 the Account Holder's Platform Licence will be governed by the licence terms set out in Service Module 1 (Platform Licence Terms);
- 5.1.2.2 the Account Holder's licence to use the API and Integration Services will be governed by the licence terms set out in Service Module 7 (Integration Services); and
- 5.1.2.3 if the Account Holder is categorised as a Value Added Reseller in accordance with Service Module 8 (Value Added Reseller Terms), the licence terms set out in that Service Module shall apply.

5.1.3 The Account Holder grants to Thomas and applicable contractors:

- 5.1.3.1 a non-exclusive, perpetual, irrevocable, royalty-free, fully paid-up, worldwide licence (including the right to sublicense through multiple tiers) to use, reproduce, process, adapt, publicly perform, publicly display, modify, prepare derivative works, publish, transmit, host and distribute:
  - (a) the content of any Assessments uploaded by the Account Holder in connection with any Solution(s) and/or Deliverable(s); and
  - (b) all Account Holder Data and any Non-Thomas Applications and program code created by or for the Account Holder in respect of any Solution(s) and/or Deliverable(s), as reasonably necessary for Thomas to provide the applicable Solution(s) and/or Deliverable(s) in accordance with the Agreement,

in any form, medium or distribution method now known or hereafter existing, known or developed. This licence extends to any third parties used by Thomas to provide any Solution(s) and/or Deliverable(s) in

accordance with the Agreement; and

- 5.1.3.2 a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into Thomas' services and solutions (including the Solutions and any related Deliverables) any suggestion, enhancement request, recommendation, correction or other feedback provided by the Account Holder relating to the operation of or other attributes of Thomas' services and solutions.

#### 5.2 Marketing

5.2.1 The Account Holder shall not undertake any marketing activities contemplating the use of Thomas' name or Thomas', service marks, trademarks or logos, without Thomas' prior written consent in each instance.

#### 6. IDENTITIES

6.1 Account Holders may have access to one or more Identities when using the Thomas systems and each Identity may present the Account Holder with different options and functionality.

6.2 Account Holders should be aware of which Identity they are using whenever interacting with the Thomas systems, and remain responsible for all acts performed in each Identity to which they have access. Where an Identity allows an Account Holder (the "**acting Account Holder**") to perform actions on behalf of another Account Holder (the "**represented Account Holder**") (for example an Account Holder who works in a corporate HR team, and as a result has access to an Identity representing the separate Account Holder corporate entity that is their employer; where the employee would be the acting Account Holder and the employer the represented Account Holder for these purposes) those actions are deemed performed both by the acting Account Holder in their personal capacity and by the represented Account Holder; and both Account Holders are jointly and severally liable for any consequences of actions performed by the acting Account Holder via such Identity.

6.3 If an Account Holder believes that they have access to an Identity that they should not have access to, then they must:

- 6.3.1 immediately cease any use of that Identity completely; and
- 6.3.2 immediately notify Thomas of such issue, providing all details and such reasonable assistance as Thomas may require to diagnose and remedy any issues related to such incorrect Identity access.

#### 7. FEES AND PAYMENT

7.1 The Account Holder will pay all Fees in accordance with the provisions of this clause 7 and as specified in the Order (including any Service Module). Except as otherwise expressly specified herein or in an Order:

- 7.1.1 Fees are based on Solutions purchased and may also be charged based on usage or other metrics or parameters set out in the relevant Service Module and/or Order;
- 7.1.2 unless expressly provided otherwise in a Service Module and/or Order; payment obligations are non-cancellable and Fees paid are non-refundable; and
- 7.1.3 unless expressly provided otherwise in a Service Module and/or Order or otherwise agreed in advance with Thomas, quantities or levels of usage purchased cannot be decreased during the relevant Term or Order Term (as applicable).

7.2 The Account Holder agrees that:

- 7.2.1 it will fulfil its obligation to pay the Fees by the date on which payment is due;
- 7.2.2 Thomas has permission to retain the Account Holder's payment information and method submitted by the Account Holder and its issuing bank; and
- 7.2.3 Thomas is authorised to charge the Fees, using the established payment method and the information the Account Holder provides that is stored in the Account Holder's account as of the applicable date for payment.

7.3 Unless otherwise stated in a Service Module or Order; invoiced

Fees are due net fourteen (14) days from the invoice date. The Account Holder is responsible for providing complete and accurate billing and contact information to Thomas and notifying Thomas of any changes to such information.

**7.4** If any invoiced amount is not received by Thomas by the due date, then without limiting its rights or remedies:

**7.4.1** those Fees may accrue late interest at the rate of four per cent (4%) of the outstanding balance per year, or the maximum rate permitted by law, whichever is lower; and/or

**7.4.2** Thomas may cancel or suspend the Agreement or any other existing Orders (including future renewals or deliveries) made by the Account Holder in whole or in part.

**7.5** If any amount owing by the Account Holder under the Agreement or any other agreement for Thomas' services and/or solutions is thirty (30) or more days overdue, Thomas may, without limiting its other rights and remedies, accelerate the Account Holder's unpaid Fee obligations under the Agreement or other agreements so that all such obligations become immediately due and payable, and may suspend any or all of the Solutions and/or Deliverables provided to the Account Holder until such amounts are paid in full.

**7.6** Thomas' fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "**Taxes**"). The Account Holder is responsible for paying all Taxes associated with its purchases and use hereunder. If Thomas has a legal obligation to pay or collect Taxes for which the Account Holder is responsible under this clause 7.6, Thomas will invoice the Account Holder and the Account Holder will pay that amount unless it provides Thomas with a valid tax exemption certificate authorised by the appropriate taxing authority. For clarity, Thomas is solely responsible for taxes assessable against Thomas based on its income, property and employees.

**7.7** Subject always to clause 19.1, the Account Holder acknowledges that all prices shown on any price list or contained in any Service Module or Order are subject to change without prior notice.



## 8. DATA PROTECTION

8.1 Within this clause 8 “**Data Controller**”, “**Data Processor**”, “**Data Subject**”, “**Personal Data**” and “**Processing**” shall have the same meanings as in the GDPR, “**Processed**” and “**Process**” shall be construed in accordance with the definition of “**Processing**”, and “**Personal Data Breach**” shall mean any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data Processed in connection with the Agreement.

8.2 Where Personal Data is Processed by either party (the “**Processing Party**”) under or in connection with the Agreement, the Processing Party shall, and shall procure that its Affiliates and its’ or their agents, sub-contractors and employees (including Personnel) shall:

8.2.1 only Process the Personal Data in accordance with the other party’s instructions and as prescribed by “APPENDIX 2”;

8.2.2 not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit to be disclosed any of the Personal Data to any third party unless specifically authorised to do so in writing by the other party;

8.2.3 Process the Personal Data in accordance with the Data Protection Legislation (as applicable) and not do or permit anything to be done which might cause the other Party to be in breach of the Data Protection Legislation; and

8.2.4 implement and ensure that its agents, sub-contractors and employees implement appropriate technical and organisational measures against unauthorised or unlawful Processing of such Personal Data and against accidental loss or destruction of, or damage to, such Personal Data and information as are appropriate to the harm that might result from unauthorised or unlawful Processing or accidental loss, destruction or damage to Personal Data and to the nature of the Personal Data which is being protected.

8.3 If Thomas Processes any Personal Data on the Account Holder’s behalf when performing its obligations under the Agreement, the parties record their intention that the Account Holder and Thomas shall each be a Data Controller in their own right and in any such case:

8.3.1 the Account Holder acknowledges that the Personal Data may be transferred or stored outside the United Kingdom or EEA where the Account Holder or its Affiliates are located in order to provide the Solutions and/or carry out Thomas’ other obligations under the Agreement;

8.3.2 the Account Holder must ensure that it is entitled to transfer the relevant Personal Data to Thomas so that Thomas may lawfully use, Process and transfer the Personal Data in accordance with the Agreement on the Account Holder’s behalf; and

8.3.3 where applicable, the Account Holder must ensure that the relevant third parties have been informed of, and have given their consent to, such use, Processing and transfer as required by all applicable Data Protection Legislation.

8.4 The Account Holder must cooperate fully with, and assist Thomas in relation to any notifications or prior approvals that Thomas may be required to effect or obtain from a regulator; including without limitation the preparation of supporting documentation to be submitted to the relevant regulator and provision of supporting documentation sufficient to evidence that the Account Holder is legally bound by the Agreement.

8.5 The Account Holder shall:

8.5.1 notify Thomas on becoming aware of any Personal Data Breach without undue delay;

8.5.2 co-operate with Thomas and take such reasonable commercial steps as are directed by Thomas to assist in the investigation, mitigation and remediation of any Personal Data Breach; and

8.5.3 not transfer any Thomas Personal Data to a country or territory outside the United Kingdom or the European Economic

Area without Thomas’ prior written consent, and where such consent is provided, so that any such transfer is fully in accordance with all applicable Data Protection Legislation.

8.6 The Account Holder shall allow Thomas or its representative on reasonable advance notice to inspect any premises where the Processing of Personal Data takes place and to inspect, audit and copy any relevant records, processes and systems in order that Thomas may satisfy itself that the provisions of this clause 8 are being complied with. The Account Holder must provide full co-operation to Thomas in respect of any such audit and shall at the request of Thomas, provide Thomas with evidence of compliance with its obligations under the Agreement.

## 9. ACCOUNT HOLDER ENVIRONMENT AND SECURITY REQUIREMENTS

9.1 The Account Holder is responsible for having and maintaining an appropriate Account Holder Environment that is suitable to receive and/or enable the use of the Solution(s) and/or Deliverable(s) and obtaining any licences for any third-party software required to use that Account Holder Environment. Thomas shall not be liable in any circumstances for any losses (including indirect or consequential loss or damage) arising directly or indirectly out of:

9.1.1 the incompatibility or failure of the Account Holder Environment with or in relation to the provision or use of the Solution(s), Deliverable(s) or any of Thomas’ infrastructure systems; and/or

9.1.2 the Account Holder’s use or misuse of the Account Holder Environment or any software.

9.2 If Thomas provides the Account Holder with one or more passwords or other security measures (“**Security Details**”) in connection with a Solution and/or Deliverable, then:

9.2.1 the Account Holder will:

9.2.1.1 use the Security Details solely for the purpose of obtaining access to the Solution and/or Deliverable in accordance with the relevant Order (including any Service Module);

9.2.1.2 keep the Security Details confidential and not share any login details or passwords with any other person; and

9.2.1.3 not permit the Security Details to be used by any unauthorised person or in any unauthorised way;

9.2.2 Thomas may change the Security Details from time to time and will notify the Account Holder of any such changes;

9.2.3 the Account Holder must comply with any security procedures or technical requirements in relation to the Solutions and Deliverables that are reasonably specified by Thomas from time to time;

9.2.4 the Account Holder will inform Thomas immediately if it has reason to believe that the safety, security or confidentiality of the Security Details of any Solution and/or Deliverable has been or may be compromised; and

9.2.5 the Account Holder will ensure that Thomas’ information security arrangements and procedures are followed in respect of the provision and/or receipt of the Solutions and Deliverables including those requirements that may be set out in any Order.

9.3 The Account Holder must notify Thomas immediately if it becomes aware of any unauthorised access to any Solution and/or Deliverable.

9.4 In order to ensure the integrity of the Solutions and Deliverables, Thomas reserves the right, at its sole discretion, and without liability, to:

9.4.1 temporarily prevent access to any Solution(s) and/or Deliverable(s);

9.4.2 remove the Account Holder’s Assessments or any Account Holder Data (or any part thereof) submitted by the Account Holder;

9.4.3 permanently disable or remove access to any Solution(s) and/or Deliverable(s) and terminate the Agreement and/or any Order immediately on written notice;

**9.4.4** take measures to prevent the further use of the affected Solution(s) and/or Deliverable(s), including blocking the Account Holder's IP address; and/or

**9.4.5** terminate the Agreement and/or any Order immediately on written notice,

and to do so without any further liability to the Account Holder or providing a refund of any Fees paid in accordance with the Agreement, if the Account Holder is found to be in breach of any of the Agreement.

## **10. INTELLECTUAL PROPERTY RIGHTS OWNERSHIP**

**10.1** All Background IPRs shall remain vested in the relevant party that owns such Background IPRs.

**10.2** The Account Holder acknowledges that the Solutions and Documentation are owned by and shall remain the exclusive property of Thomas or Thomas' licensors or third-party providers. No rights in the Solutions and/or Documentation are granted or conveyed by Thomas other than the limited licence to use them as set forth in the Agreement, and nothing in the Agreement will be deemed to grant a party any licence, sub-licence, copyright interest, proprietary right or other claim against or interest in the other party's Intellectual Property Rights.

**10.3** All Intellectual Property Rights in:

**10.3.1** the Deliverables (including the content of Assessment Responses received in response to any Assessment Invites);

**10.3.2** anonymous data gathered by Thomas from the Account Holder, including data and aggregated data that Thomas derives from the Assessment Invites and the Assessment Responses received in response to the Assessment Invites (the "**Assessment Data**"),

shall belong to, vest in and remain vested in Thomas unconditionally and immediately upon their creation, and the Account Holder shall not have any rights in, or to, the Deliverables or the content of Assessment Responses, other than in accordance with the licence granted to the Account Holder in clause 5.1.1. Accordingly, the Account Holder assigns to Thomas, with full title guarantee for all purposes, applications and field of use (including by way of assignment of future Intellectual Property Rights) all Intellectual Property Rights in the Deliverables and the Assessment Data, including the right to take action for any past, present and future damages and other remedies in respect of any infringement. The Account Holder must execute, and will procure that its sub-contractors execute, such documents and do such things as Thomas may consider reasonably necessary to give effect to this clause 10.3.

**10.4** Subject to clause 10.3, the Account Holder retains ownership of all of its Intellectual Property Rights in its Content. Thomas does not claim ownership over any of the Account Holder's Content. Thomas shall only store, copy, use or access Content to the extent necessary to perform its obligations under these Terms and the relevant Order and shall not disclose it to any third party without the Account Holder's prior written approval.

**10.5** Neither party shall be prevented or restricted from developing and using any techniques, ideas, concepts, information or know-how relating to methods or processes of general application which can be recalled only from the unaided memories of either party's personnel, provided that in doing so there is no infringement of the Intellectual Property Rights of the other party.

**10.6** The Account Holder waives and will ensure that its employees, contractors, consultants, sub-contractors and all of its personnel waive all moral rights they might have in the Deliverables.

## **11. SUB-CONTRACTING**

**11.1** Thomas may sub-contract or outsource the performance of any of its obligations under the Agreement without the Account Holder's prior written consent, provided that this shall not relieve Thomas from its obligations under the Agreement.

**11.2** Without prejudice to the generality of clause 11.1, Thomas may appoint its local Affiliates to perform certain of its obligations under the

Agreement as a sub-contractor, including the provision of the Solution(s) to the Account Holder.

**11.3** Each party shall be responsible and liable for any sub-contracting or outsourcing under the Agreement as if such acts or omissions of the sub-contractor or relevant third party were the acts or omissions of its own.

## **12. CONFIDENTIALITY**

**12.1** Each party receiving Confidential Information ("**Receiving Party**") from the other party ("**Disclosing Party**") shall keep that information confidential and secure and comply with this clause 12. The Receiving Party shall not disclose the Disclosing Party's Confidential Information except with the prior written consent of the Disclosing Party or in accordance with this clause 12.

**12.2** The obligations of confidentiality set out in this clause 12 shall not apply where the Receiving Party can demonstrate that the Confidential Information:

**12.2.1** is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party;

**12.2.2** is or was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party;

**12.2.3** is or was received from a third party without breach of any obligation owed to the Disclosing Party; or

**12.2.4** was independently developed by the Receiving Party,

provided that nothing herein shall:

**12.2.5** confer any license or other rights to the Receiving Party for any of the information referenced in the exceptions stated within this clause 12.2; and

**12.2.6** permit the Receiving Party to disclose or use, except as explicitly permitted elsewhere in the Agreement, Confidential Information of the Disclosing Party and then only on an "as-needed" basis for purposes of the Agreement.

**12.3** Upon the expiry of the Term and/or an Order Term (as applicable), or any earlier termination of the Agreement and/or an Order (as applicable), each party will promptly return or destroy the relevant Confidential Information of the other and any copies, extracts and derivatives thereof, except as otherwise set out in the Agreement. Upon an Account Holder ceasing to have access to a given Identity (for example, if an Account Holder has access to an Identity in their role as an employee of a company, but then leaves that employment and therefore loses that Identity), the Account Holder will promptly return or destroy all Confidential Information relating to the relevant Identity.

**12.4** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

**12.5** Each party acknowledges that its breach of this clause 12 may cause irreparable injury to the other party for which monetary damages may not be an adequate remedy. Accordingly, a party will be entitled to seek any legal or equitable remedies in the event of such a breach by the other. The operation of this clause 12 shall survive the termination or expiration of the Agreement.

## **13. REPRESENTATIONS AND DISCLAIMERS**

### **13.1 Representations**

**13.1.1** Each party represents that it has validly entered into the Agreement and has the legal power to do so.

### **13.2 Disclaimers**

**13.2.1** The provision of the Solutions and Deliverables are provided on an "as is, where is" basis.

**13.2.2** Except to the extent prohibited by law, or to the extent any statutory rights apply that cannot be excluded, limited or waived,

Thomas and its licensors:

**13.2.2.1** I make no representations or warranties of any kind, whether express, implied, statutory or otherwise regarding the Solutions, Deliverables and/or Documentation (and the Account Holder acknowledges that it shall not rely on any Deliverables and/or Documentation without first verifying them); and

**13.2.2.2** disclaim all warranties, including any implied or express warranties:

- (a) of satisfactory quality, fitness for a particular purpose, non-infringement, or quiet enjoyment;
- (b) that the Solutions and/or Deliverables will be uninterrupted, error free or free of harmful components; and
- (c) that any Solutions and/or Deliverables will be secure or not otherwise lost or altered.

#### **14. INDEMNIFICATION**

**14.1** The Account Holder will indemnify and undertakes to keep Thomas, its officers, servants and agents indemnified against any costs and expenses (including reasonable legal costs and the costs of any settlement) arising out of any claim, action, proceeding or demand that may be brought, made or prosecuted against Thomas arising out of or as a consequence of:

- 14.1.1** a breach of the Agreement by the Account Holder;
- 14.1.2** an unlawful or negligent act or omission by the Account Holder; and/or
- 14.1.3** an infringement of any third-party Intellectual Property Rights.

#### **15. LIMITATION OF LIABILITY**

**15.1** Nothing in the Agreement shall exclude or limit any liability for:

- 15.1.1** fraud or fraudulent misrepresentation;
- 15.1.2** death or personal injury caused by a party's negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 15.1.3** losses arising from breach of the provisions of:
  - 15.1.3.1** clause 3.2.1 (Use Restrictions);
  - 15.1.3.2** clause 12 (Confidentiality);
  - 15.1.3.3** clause 14 (Indemnification); or
- 15.1.4** any other liability that may not be restricted, or excluded, as a matter of law.

**15.2** Subject to clause 15.1, Thomas shall not under any circumstances whatsoever be liable to the Account Holder in equity (including restitution), contract, tort (including negligence), breach of statutory duty, or in any other way, for any:

- 15.2.1** loss of profits, business or revenues;
- 15.2.2** loss of anticipated savings;
- 15.2.3** loss of goodwill;
- 15.2.4** business interruption;
- 15.2.5** loss of data (including use or receipt of data); or
- 15.2.6** indirect, special, incidental, consequential, or exemplary damages,

suffered or incurred, in each case whether direct or indirect, and regardless of whether Thomas has been advised of the possibility of such losses or damages.

**15.3** Subject to clause 15.1, Thomas shall not under any circumstances whatsoever be liable to the Account Holder in equity (including restitution), contract, tort (including negligence), breach of statutory duty, or in any other way:

- 15.3.1** if any invoiced amount remains unpaid by the Account Holder after the due date for payment of such invoiced amount; or
- 15.3.2** for any loss or damage caused by errors or omissions in any Content provided to Thomas by the Account Holder or any actions taken by Thomas at the Account Holder's direction.

**15.4** Subject to clauses 15.1, 15.2, 15.3 and 15.5, the total aggregate liability of Thomas arising out of or related to the Agreement, whether in equity (including restitution), contract, tort (including negligence), breach of statutory duty, or in any other way, will in no circumstances exceed an amount equivalent to one hundred percent (100%) of the total amount paid by the Account Holder under the applicable Order which is giving rise to the liability in the previous twelve (12) months under which the liability arose.

**15.5** Subject to clause 15.1, Thomas' liability to the Account Holder arising out of or related to a breach of clause 8 will be limited to an amount equivalent to five hundred percent (500%) of all amounts paid or payable under the Agreement in the previous twelve (12) months under which the liability arose.

**15.6** Where an Account Holder, by virtue of an Identity to which they have access, is entitled to be an acting Account Holder on behalf of a represented Account Holder (as the terms "acting Account Holder" and "represented Account Holder" are defined in clause 5), any circumstance which, but for this clause 15.6, would give rise to a right for both the acting Account Holder and the represented Account Holder to make a claim against Thomas, then only the represented Account Holder shall be entitled to bring the relevant claim, and the limitations and exclusions set out in this clause 15 shall apply to any such claim the represented Account Holder may bring. The acting Account Holder hereby indemnifies and shall keep indemnified Thomas in full and on demand against any and all costs, expenses or other consequences suffered by Thomas as a result of any claim brought or attempted to be brought by an acting Account Holder in contravention of this clause.

**15.7** Subject to clause 15.1, Thomas will not be liable for breach of any of the terms of the Agreement arising from or in relation to:

- 15.7.1** any design or specification supplied by the Account Holder or any customisation provided at the Account Holder's request;
- 15.7.2** any alterations to any Solution(s) and/or Deliverable(s) made by anyone other than Thomas or someone authorised by Thomas;
- 15.7.3** use of any Solution(s) and/or Deliverable(s) by an individual who has not received appropriate training by Thomas and/or who is not authorised by Thomas for such use;
- 15.7.4** any delay or failure in the provision of any Solution(s) and/or Deliverable(s) to the Account Holder caused by anyone other than Thomas;
- 15.7.5** a failure to follow Thomas' instructions (whether oral or in writing), or Thomas' fair codes of assessment as detailed in the Documentation, or any other misuse of any Solution(s) and/or Deliverable(s) without Thomas' prior approval; or
- 15.7.6** the use of any Solution(s) and/or Deliverable(s) in breach of the Agreement or any other wrongful or negligent act or omission by the Account Holder.

**15.8** For the avoidance of doubt, the calculation of each liability cap at clauses 15.4 and 15.5 shall be based on Fees paid, net of any deductions that have been properly made.

## 16. TERM AND TERMINATION

### 16.1 Term

16.1.1 The Agreement commences on the Effective Date and shall continue, unless terminated earlier, until all Solutions hereunder have been provided or have been terminated (the “**Term**”).

16.1.2 Each Order will commence on the applicable Order Commencement Date and will continue, unless terminated earlier, for the relevant Order Term.

### 16.2 Termination

#### 16.2.1 Mutual Termination

16.2.1.1 Without prejudice to any other rights or remedies each party may have under the Agreement or at law, either party may terminate the Agreement and/or any or all Orders for cause:

- (a) upon thirty (30) days' written notice to the other party of a material breach by such other party if the breach remains uncured at the expiration of such period; or
- (b) if the other part becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

16.2.1.2 A party may terminate any Order in accordance with any express terms of that Order.

#### 16.2.2 Thomas Termination

16.2.2.1 Without prejudice to any other rights or remedies Thomas may have under or in accordance with the Agreement, Thomas may terminate the Agreement (in whole or in part) and/or any or all Orders at any time during the Term with immediate effect by written notice to the Account Holder in the event that any circumstances arise which permit Thomas to suspend the Solutions and/or Deliverables pursuant to clause 17 and/or clause 7.5.

16.2.2.2 In the event of any breach of the Agreement or any non-payment by the Account Holder, then, in circumstances in which Thomas is entitled to terminate the Agreement, Thomas may (at its discretion) instead:

- (a) suspend performance of the Agreement or any Order(s). In that event, Thomas' right to terminate will be reserved and may be exercised by Thomas at a later date if it so wishes; or
- (b) exercise its right of termination (or suspension in clause 16.2.2.2(a) above) only in relation to that part of the Agreement that relates to the provision of the particular Solution and/or Deliverable in relation to which the relevant breach or non-payment has occurred (in which the remainder of the Agreement shall remain unaffected).

### 16.3 Payment upon termination

16.3.1 If the Agreement and/or any Order(s) are terminated by Thomas in accordance with clause 16.2.2, the Account Holder must pay any unpaid Fees under the Agreement to Thomas.

16.3.2 In no event will the termination or expiry of the Agreement or any Order (in whole or in part and howsoever caused) relieve the Account Holder of its obligation to pay any Fees payable to Thomas for the period prior to the effective date of termination.

16.3.3 Except as set out in this clause 16.3 or as otherwise provided in a Service Module or an Order, neither party shall be entitled to receive any refund or payment upon termination of the Agreement and/or any Order (in whole or in part).

### 16.4 Consequences of Termination

16.4.1 Where the Agreement is terminated in part, or where an Order is terminated either in full or in part, the remainder of the Agreement Terms and/or such partially terminated Order in effect as at the date of termination shall otherwise continue in full force and effect.

16.4.2 Upon termination of the Agreement in whole or in part and/

or any Order, in relation to the Solution(s) being terminated:

16.4.2.1 the Account Holder must immediately cease using such Solution(s) and related Deliverable(s) and promptly destroy or deliver (at Thomas' request) all data belonging to Thomas in the Account Holder's possession to Thomas forthwith, and the Account Holder must provide certification to Thomas of any such destruction upon Thomas's request. The requirement to deliver or destroy all copies of the data shall not apply to any data that the Account Holder is required to retain under any legal or regulatory obligation (and only to the extent and for such time as is required under any such obligation), provided that such data shall be subject to confidentiality obligations in clause 12; and

16.4.2.2 each party shall promptly discontinue the use of the other party's service marks, trademarks, trade names and logos and cease all marketing efforts relating to its obligations hereunder.

16.4.3 Termination or expiry of the Agreement and/or any Order (in whole or in part), howsoever caused, shall not prejudice the rights and remedies of either party which may have accrued under it up to the date of termination or expiry, and shall not affect any provision of the Agreement which is expressly or by implication intended to come into or remain in effect on or after such termination or expiry.

## 17. THOMAS SUSPENSION RIGHTS

17.1 Thomas may at any time suspend any Solution, Deliverable, or any part of them, if Thomas reasonably believes that a Platform User's use of any Solution(s) and/or Deliverable(s):

- 17.1.1 presents a material security risk;
- 17.1.2 will materially affect the integrity of, or will interfere materially with the proper and continued availability and/or operation of the Solution(s) and/or Deliverables;
- 17.1.3 jeopardises Thomas' relationships with any of its or their third-party providers, or any other third party;
- 17.1.4 violates Applicable Regulations;
- 17.1.5 violates or infringes any Intellectual Property Right of Thomas or a third party;
- 17.1.6 is subject to an order from a court or governmental entity stating that such use generally or for certain activities must stop; or
- 17.1.7 otherwise violates these Terms, any Order or any of Thomas' published terms of use, provided that Thomas shall use its reasonable endeavours to notify the Account Holder of the suspension and, where practicable, of the reason for the suspension and its expected duration.

17.2 In any case of suspension in accordance with clause 17.1 Thomas reserves the right to determine, at its sole discretion and without liability, whether to:

- 17.2.1 reinstate access to or operation of the affected Solution(s) and/or Deliverable(s); and/or
- 17.2.2 permanently disable access to or operation of the affected Solution and/or Deliverable(s) and terminate this Agreement and/or any Order in whole or in part immediately on written notice to the Account Holder.

## 18. FORCE MAJEURE

18.1 Subject to compliance with the remainder of this clause 18, neither party shall be liable for any delay or failure to perform its obligations pursuant to the Agreement, if such delay or failure to perform is due to a Force Majeure Event.

18.2 The party claiming the Force Majeure Event (the “**Affected Party**”) must promptly notify the other party in writing of the reasons and circumstances of the Force Majeure Event and the likely duration of the delay or disruption thereby resulting, and will take all reasonable steps to overcome the delay or disruption.

18.3 If the Affected Party has duly complied with clause 18.2, its performance under the Agreement will be suspended for the period that the Force Majeure Event continues and the Affected Party will have an



extension of time for performance which is reasonable and in any event equal to the period of delay or stoppage caused by the Force Majeure Event, provided however that, if the delay or stoppage continues for more than forty-five (45) days (continuously) then the Affected Party may terminate these Terms or the affected Order Form (as applicable) with immediate effect on giving written notice to the other party and neither party will be liable to the other for the termination.

## 19. CHANGES

**19.1** Thomas may change these Terms at its sole discretion. Any such changes will be posted on the Thomas Website and Thomas may provide notification of changes via email or via the applicable Solution(s). Changes to these Terms will be effective as soon as they are publicly posted. The Account Holder's continued use of the Thomas systems and Solutions after any new version of these Terms is posted will constitute acceptance of the updated Terms.

**19.2** Thomas may change or discontinue any or all of the Solutions or change or remove functionality of any or all of the Solutions from time to time. Thomas will notify the Account Holder of any material change to or discontinuation of the Solutions.

## 20. NOTICES

**20.1** Any notice required to be given under the Agreement shall be in writing and shall be delivered by hand or sent by pre-paid post or recorded delivery post to the other party at its address set out in the Agreement, or such other address as may have been notified by that party for such purposes.

**20.2** Notices under the Agreement can be validly served by e-mail. Any notices sent by email:

**20.2.1** to the Account Holder shall be sent to the email address given to Thomas at the time of registration, or such other email address as may have been notified by the Account Holder at a later date; and

**20.2.2** to Thomas shall be sent to [salesinvoicing@thomas.co.uk](mailto:salesinvoicing@thomas.co.uk) with the subject line "Written Notice Relating to the Thomas Master Terms".

## 21. GENERAL

### 21.1 Governing Law and Jurisdiction

**21.1.1** The Agreement, and any dispute or non-contractual obligation arising out of or in connection with it, shall be governed by and construed in accordance with English law.

**21.1.2** Any dispute or claim arising out of or in connection with the Agreement or its subject matter or formation (including any non-contractual dispute or claim) shall be subject to the exclusive jurisdiction of the courts of England, and the parties hereby irrevocably submit to the exclusive jurisdiction of the courts of England for these purposes.

### 21.2 Entire Agreement

**21.2.1** The Agreement, constitutes the entire agreement and understanding between the parties in respect of its subject matter and supersede any previous agreement, warranty, statement, representation, understanding or undertaking (in each case whether written or oral) made before the Effective Date by, or on behalf of, the parties and relating to its subject matter.

**21.2.2** Each party confirms that it has not relied upon and, subject to clause 21.2.4, shall have no remedy in respect of, any agreement, warranty, statement, representation, understanding or undertaking made by either party unless that warranty, statement, representation, understanding or undertaking is expressly set out in the Agreement.

**21.2.3** Subject to clause 21.2.4, neither party shall be entitled to the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any agreement, warranty, statement, representation or undertaking whether or not it is set out in the Agreement.

**21.2.4** Nothing in the Agreement shall restrict or exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.

### 21.3 Assignment

**21.3.1** Subject to clause 21.3.2 neither party may assign, novate or otherwise transfer any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld).

**21.3.2** Thomas may assign, novate or otherwise transfer any or all of its rights and/or obligations under the Agreement at any time on notice in writing to the Account Holder.

**21.3.3** Subject to the foregoing, the Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

### 21.4 Relationship of the Parties

Nothing in the Agreement is intended or shall be construed as creating a partnership, joint venture, the relationship of principal and agent, or any other legal relationship between the parties that would impose liability upon one party for the act or failure to act of the other. Neither party has authority or power to make representations or bind the other in any way.

### 21.5 Third Party Beneficiaries

Save as expressly set out in the Agreement, a person who is not a party to the Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms, but this does not affect any right or remedy of any person which exists otherwise than pursuant to that Act

### 21.6 Waiver

Any delay or failure by a party in exercising, or any waiver by a party of, its rights under or in connection with the Agreement will not limit or restrict the future exercise or enforceability of those rights.

### 21.7 Cumulative Remedies

The rights and remedies under the Agreement are cumulative and in addition to and, except where otherwise expressly provided in the Agreement, do not exclude any rights and remedies provided by law (including equitable remedies) or otherwise.

### 21.8 Further Assurance

Each party shall, at the request and cost of the other, do or procure the doing of all such further acts, and execute and deliver or procure the valid execution and delivery of all such documents, as may from time to time be necessary in the requesting party's reasonable opinion to give full effect to the Agreement and to secure to the requesting party the full benefit of the rights, remedies and benefits conferred on it by the Agreement.

### 21.9 Severance

**21.9.1** If any provision (or any part of any provision) of the Agreement is, or becomes illegal, invalid or unenforceable in any respect:

**21.9.1.1** it shall not affect or impact the legality, validity or enforceability of any other provision of the Agreement; and

**21.9.1.2** the parties shall negotiate in good faith to amend such provision (or part provision), such that as amended it is legal, valid and enforceable and to the greatest extent possible achieves the parties' original commercial intention.

### 21.10 Counterparts

**21.10.1** The Agreement may be executed in any number of counterparts, and by the parties as separate counterparts but will not be effective until each party has executed at least one counterpart.

**21.10.2** Each counterpart shall constitute an original of the Agreement, but all counterparts shall together constitute one and the same agreement.

### 21.11 Variation

Except in respect of any changes made pursuant to clause 19, the Agreement shall not be modified or amended unless in writing and signed on behalf of the Account Holder and Thomas by each party's respective duly authorised representatives.

## APPENDIX 1 DEFINITIONS

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In the Agreement, unless the context otherwise requires, the defined terms shall have the following meanings.

**“Account Holder”** means the individual who is agreeing (whether for itself or on behalf of a company or other legal entity) to purchase Solution(s) from Thomas in accordance with and pursuant to the terms of the Agreement;

**“Account Holder Data”** means all code, data, documentation, information, text, images, statistics, analysis, diagrams, images, sounds and other materials embodied in any form (including any Content) which is inputted to the Thomas Platform or otherwise provided by the Account Holder; any Platform Users or Thomas on the Account Holder's or any Platform User's behalf, for the purpose of using the Thomas Platform or any Platform Licence or for facilitating the Account Holder's or any Platform User's use of the Thomas Platform or any Platform Licence;

**“Account Holder Environment”** means the combination of hardware, software, telecommunications links, systems and other material (or any constituent parts) made available by the Account Holder; used by the Account Holder (whether directly or through a service provider) or as used or interfaced to by Thomas (including Thomas sub-contractors);

**“Account Holder Obligations”** has the meaning set out in clause 3.1.1;

**“Affected Party”** has the meaning set out in clause 18.2;

**“Affiliate”** means in relation to a party, any group undertaking of that party, in each case from time to time and the term “group undertaking” shall be construed in accordance with Section 1161 of the Companies Act 2006;

**“Agreement”** means these Terms and each Order under it, all as may be varied from time to time in accordance with such terms;

**“Applicable Regulations”** means all laws and regulations as applicable in the countries where Solutions are provided, which are in force from time to time during the Term;

**“Assessment”** means an online assessment of one or more questions that is created by or on behalf of Thomas for use by the Account Holder in accordance with this Agreement;

**“Assessment Data”** has the meaning set out in clause 10.3.2;

**“Assessment Invite”** means, as a part of Thomas' Solution offering, the creation by Thomas of an invite for a Candidate to respond to an Assessment;

**“Assessment Response”** means each completed or partially completed response to an Assessment by a Candidate;

**“Background IPRs”** means Intellectual Property Rights that:

- (a) belong to or are licensed to a party prior to the Effective Date and all developments, modifications and/or enhancements of the same; and/or
- (b) that are generated or acquired after the Effective Date, but excluding the Deliverables;

**“Business Day”** means any day except Saturdays and Sundays and any public holidays in England, or as otherwise set out in an Order Form in respect only of that particular Order Form;

**“Candidate”** means an individual appointed with a candidate Identity who has Assessment Invites presented to them and/or has previously taken Assessments;

**“Confidential Information”** means any information which is disclosed by one party to the other whether before or after the Effective Date, which is designated in writing as confidential or would appear to a reasonable person to be confidential and which relates to a party's

business, affairs, operations, customers, processes, budgets, pricing policies, products, information, strategies, developments, trade secrets, know-how, design rights, market opportunities, personnel, plans or intentions, suppliers, other contracting parties, or other persons in respect of whom a confidentiality obligation may arise of the party disclosing it, all Account Holder Data and all information derived from any of the above together with the existence or provisions of the Agreement, and the negotiations relating to the same;

**“Content”** means any code, data, documents, information, text, images, statistics, analysis, diagrams, images, sounds and other materials embodied in any form relating to the Account Holder which the Account Holder may supply or make available to Thomas and/or a Thomas sub-contractor in relation to an Assessment Invite and/or any Solution(s), but which for the avoidance of doubt excludes the Deliverables;

**“Data Protection Legislation”** means the EU Data Protection Directive 95/46/EC, as transposed into domestic legislation and in each case as amended, replaced or superseded from time to time, including without limitation by the EU General Data Protection Regulation 2016/679 of the European Parliament and of the Council (“**GDPR**”) and any data protection laws substantially amending, replacing or superseding the GDPR following any exit by the United Kingdom from the European Union, and/or any other applicable data protection or national/federal or state/provincial/emirate privacy legislation in force, including where applicable, statutes, decisions, guidelines, guidance notes, codes of practice, codes of conduct and data protection certification mechanisms issued from time to time by courts, any authority and other applicable authorities;

**“Deliverables”** means the items (including the data, information, extracts, commentary and analysis, insights, reports, user guides, operating procedures and other documents) which are produced, delivered and/or otherwise made available to the Account Holder as outputs of the Solutions, and whether tangible or intangible and which shall include Assessments and Assessment Responses;

**“Disclosing Party”** has the meaning set out in clause 12.1;

**“Documentation”** means a description of the Solutions, Deliverables, technical specifications, user manuals, operating manuals, process definitions, policies and procedures, as updated from time to time;

**“Effective Date”** means the earlier of:

- (a) the date on which the Account Holder ticks a box online indicating its acceptance to or otherwise accepts, these Terms;
- (b) the date on which the Account Holder first executes an Order to purchase any Solution(s) under the Agreement;

**“Fees”** mean the charges levied by Thomas in accordance with the tariffs, scales, charges, invoicing methods and terms of payment as set out in clause 7 and each applicable Order Form;

**“Force Majeure Event”** means an act, omission or circumstance relied on by one of the parties to the Agreement as a force majeure event and over which that party could not reasonably have exercised control, including, without limitation, any of the following: act of God, governmental act, war, fire, flood, explosion or civil commotion;

**“Identity”** means a collection of functional roles that apply to a particular Account Holder when using the Thomas systems, which may include (without limitation) one or more of the following:

- (a) as a Candidate who has Assessment Invites presented to them;
- (b) as a Candidate who has previously taken Assessments and wishes to have access to the reports produced based on their Assessment Responses;

- (c) as an administrative user entitled to offer Assessment Invites to Candidates and review the resulting reports based on the Assessment Responses of those Candidates;
- (d) a user entitled only to view Assessment Responses (including for example an employee of the Account Holder with management responsibilities); or
- (e) as a consultant working with multiple different other Account Holders;

**“Intellectual Property Rights”** means:

- (a) patents, utility models, supplementary protection certificates, petty patents, rights in trade secrets and other confidential or undisclosed information (such as inventions (whether patentable or not) or know-how) registered designs, rights in copyright (including authors' and neighbouring or related insert “moral” rights), database rights, design rights, semiconductor topography rights, mask work rights, trade marks and service marks;
- (b) all registrations or applications to register any of the items referred to in paragraph (a); and
- (c) all rights in the nature of any of the items referred to in paragraphs (a) or (b) including continuations, continuations in part and divisional applications, reputation, personality or image, trade names, business names, brand names, get-up, logos, domain names and URLs, rights in unfair competition and, without prejudice to anything set out elsewhere in this definition, rights to sue for passing off and all rights having equivalent or similar effect to, and the right to apply for any of, the rights referred to in this definition in any jurisdiction;

**“Malicious Code”** means code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses;

**“Non-Thomas Applications”** means a web-based, mobile, offline or other software application functionality that is provided by the Account Holder or a third party and interoperates with a Solution, including, for example, an application that is developed by or for the Account Holder;

**“Online Unit Purchase Services”** has the meaning set out in Service Module 2 (Online Services - Unit Purchases);

**“Order”** has the meaning set out in clause 1.5;

**“Order Commencement Date”** means the earlier of:

- (a) the date specified as such in any applicable Order Form relating to the Order;
- (b) the date of the second party's signature or acceptance of any applicable Order Form relating to the Order; or
- (c) where no Order Form applies to a particular Order, the date of the second party's acceptance of the terms relating to the applicable Order;

**“Order Form”** means a written ordering document or an online order form specifying the Solution(s) and related services and Deliverables to be provided to the Account Holder under and in accordance with the Agreement and that is entered into between the Account Holder and Thomas, including any addenda and supplements thereto;

**“Order Term”** means:

- (a) the period stated in any applicable Order Form relating to the Order; or
- (b) where no such period is stated, the period from the Order Commencement Date until the Order is terminated in accordance with its terms;

**“Permitted Purpose”** means the specific permitted purpose(s) for which the Solution may be used as specified for the relevant Solution in the applicable Order Form and/or Service Module. For the avoidance of doubt, use purposes such as for “internal business purposes” or for “general business use” shall not be permitted, unless expressly specified to

apply for the relevant Solution in the corresponding Order Form and/or Service Module;

**“Personal Data”** has the meaning given to it in the Data Protection Legislation;

**“Platform Licence”** means a licence granted to the Account Holder for access to and use of the Thomas Platform and for provision of Online Services and related Deliverables, in accordance with Service Module 1 (Platform Licence Terms);

**“Platform User”** means, in respect of a Platform Licence, the permitted users who are appointed by the Account Holder in accordance with clause 4.1;

**“Processing Party”** has the meaning set out in clause 8.2;

**“Receiving Party”** has the meaning set out in clause 12.1;

**“Security Details”** has the meaning set out in clause 9.2;

**“Service Module”** means the terms which govern a specific type of Solution and which shall be automatically incorporated into an Order where the Account Holder elects to be provided with such Solution(s) from Thomas and which shall include the following:

- (a) Platform Licence Terms (Service Module 1);
- (b) Online Services - Unit Purchases (Service Module 2);
- (c) Online Services - Subscription Terms (Service Module 3);
- (d) Training Services (Service Module 4);
- (e) Consultancy Services (Service Module 5);
- (f) Managed Services (Service Module 6);
- (g) Integration Services (Service Module 7); and
- (h) Value Added Reseller Terms (Service Module 8).

**“Solutions”** means the various solutions and services that are ordered by the Account Holder under an Order Form (including any applicable Service Module) and made available by Thomas;

**“Taxes”** has the meaning set out in clause 7.6;

**“Term”** means the term of the Agreement, as specified under clause 16.1.1;

**“Terms”** means these terms and conditions, the relevant Service Module(s), appendices and annexes, together with any incorporated documents;

**“Thomas”** means the entity identified as such in the relevant Order or, in the absence of any such entity being identified in the relevant Order, Thomas International Limited;

**“Thomas Platform”** means the various Solutions and related services, Deliverables, Documentation, facilities and tools offered and provided by Thomas via its online management system or otherwise via the Thomas systems, and accessed by the Account Holder subject to the terms of the Agreement;

**“Thomas Website”** means [www.thomas.co](http://www.thomas.co);

**“Unit”** has the meaning set out in Service Module 2 (Online Services - Unit Purchase);

**“Unit Term”** has the meaning set out in Service Module 2 (Online Services – Unit Purchase); and

**“Value Added Reseller”** has the meaning set out in Service Module 8 (Value Added Reseller Terms).

In the Agreement, unless the context otherwise requires:

- (a) headings used are for convenience and ease of reference only, are not part of the Agreement and shall not be relevant to or affect the meaning or interpretation of the Agreement;
- (b) references to gender include all genders and words importing the singular include the plural and vice versa as the context so requires;
- (c) a reference to a clause or schedule is a reference to a clause or

schedule to these Terms and a reference to these Terms includes any of the attached schedules. All schedules to these Terms and the terms thereof shall be an integral part of these Terms;

- (d) a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed;
  - (e) if any provision in a definition is a substantive provision conferring rights or imposing obligations on any party, notwithstanding that it is only in the definition clause, effect shall be given to it as if it were a substantive provision in the body of the Agreement;
  - (f) unless otherwise stated to the contrary, **“day”** means a calendar day and **“month”** means a calendar month;
  - (g) a reference to a person includes a natural person, corporate or unincorporated body or any other organisation (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns; and
  - (h) references to legal, statutory or regulatory requirements, obligations or provisions include those legal, statutory or regulatory requirements, obligations or provisions as they may be amended, restated, re-enacted or otherwise modified from time to time.
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## APPENDIX 2

### DESCRIPTION OF PERSONAL DATA PROCESSING

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This schedule contains certain details of the Processing of Personal Data.

#### Part 1. Thomas as Relevant Controller

In respect of the following Processing, Thomas is the Relevant Controller and the Account Holder is the Relevant Processor:

##### 1. Subject matter and duration of the Processing of the Personal Data

The subject matter and duration of the Processing of the Personal Data are set out in the Agreement.

##### 2. The nature and purpose of the Processing of the Personal Data

2.1 The nature and purpose of the Processing of the Personal Data are set out in the Agreement.

2.2 The purposes may include, but are not limited to:

- the Processing of Personal Data relating to the Account Holder, Candidates, Platform Users, administrative users of the Platform and/or Thomas consultants or employees as a result of interactions relating to this Agreement and the provision of the Solutions and related services;
- the Processing of Personal Data relating to customers as a result of interactions relating to this Agreement and the provision of the Solutions and related services; and
- the Processing of Personal Data for research purposes, including using Candidate Personal Data to create an anonymised form of such Personal Data.

##### 3. The types of the Personal Data to be Processed

3.1 The Personal Data may include, but is not limited to:

- Basic Identification Information: address, title, preferred salutation, telephone number; email address, contact information; date of birth/age, place of birth, gender, citizenship, country of residence, occupation, employer; employment status, income, bills or correspondence showing address, identity risk assessment score and feedback, and other identity, occupation or income related data; marital status, financial dependents, languages spoken, lifestyle, hobbies and interests, and other background data and relationship management information; bank account details.

3.2 Processing may include the Processing of certain **Special Categories of Personal Data** and/or data relating to criminal convictions and offences where necessary and in accordance with applicable Data Protection Laws: only to the extent that the Assessment Responses constitute Personal Data which, when combined with the underlying psychological metrics, might constitute special categories of data about a Data Subject.

##### 4. The categories of Data Subject to whom the Personal Data relates

- Current, former and prospective customers (including the Account Holder);
- Candidates;
- Platform Users (including any administrative users of the Platform); and
- Current and former employees of the Account Holder and/or Thomas (including any consultants).

##### 5. The obligations and rights of Thomas

The obligations and rights of Thomas are set out in the Agreement.

#### Part 2. Account Holder as Relevant Controller

In respect of the following Processing, the Account Holder is the Relevant Controller and Thomas is the Relevant Processor:

5.1 Subject matter and duration of the Processing of the Personal Data The subject matter and duration of the Processing of the Personal Data are set out in the Agreement.

##### 6. The nature and purpose of the Processing of the Personal Data

6.1 The nature and purpose of the Processing of the Personal Data are set out in the Agreement.

6.2 The purposes may include, but are not limited to:

- the Processing of Personal Data relating to the Account Holder, Candidates, Platform Users, administrative users of the Platform and/or Thomas consultants or employees as a result of interactions relating to this Agreement and the provision of the Solutions and related services;
- the Processing of Personal Data relating to customers as a result of interactions relating to this Agreement and the provision of the Solutions and related services

##### 7. The types of the Personal Data to be Processed

7.1 The Personal Data may include, but is not limited to:

- Basic Identification Information: address, title, preferred salutation, telephone number; email address, contact information; date of birth/age, place of birth, gender, citizenship, country of residence, occupation, employer; employment status, income, social security or national insurance number; photographs, copies of passports or other national or government identity documents, bills or correspondence showing address, identity risk assessment score and feedback, and other identity, occupation or income related data; marital status, financial dependents, languages spoken, lifestyle, hobbies and interests, and other background data and relationship management information; bank account details.

7.2 Processing may include the Processing of certain **Special Categories of Personal Data** and/or data relating to criminal convictions and offences where necessary and in accordance with applicable Data Protection Laws: only to the extent that there are any special categories of Personal Data in the Deliverables.

##### 8. The categories of Data Subject to whom the Personal Data relates

- Current, former and prospective customers;
- Candidates;
- Platform Users (including any administrative users of the Platform); and
- Current and former employees of the Account Holder and/or Thomas (including any consultants).

##### 9. The obligations and rights of the Account Holder

The obligations and rights of the Account Holder are set out in the Agreement.