

THOMAS ASSESS MASTER TERMS

1. STRUCTURE AND SCOPE

These Thomas Assess master terms ("Terms") govern Our licencing to You of the Subscription and Your use of the Subscription Services and Deliverables. Under these Terms, You and We may enter into one or more Orders which shall upon execution, become incorporated into and subject to these Terms. In the event of any conflict or ambiguity the order of precedence shall be as follows; i) the Order, the body of these Terms and iii) any Schedules to these Terms. Each party represents that it has validly entered into the Agreement and has the legal power to do so.

2. PROVISION OF SUBSCRIPTIONS SERVICES

During the applicable Subscription Period, We shall make available to You the Subscription Services and Deliverables on the Terms. A Subscription for the Subscription Services shall commence from the Subscription Start Date and continue for an initial term of twelve (12) months or such other period as is set out in an Order ("**Initial Subscription Period**"); and subject to clause 17.1, automatically renew for further twelve (12) month periods ("**Renewed Subscription Period**") at the end of the Initial Subscription Period or a Renewed Subscription Period (as applicable), each a "**Subscription Period**".

3. SUBSCRIPTION UPGRADES

We may from time to time introduce new features to the Subscription Services which do not form part of the Your Subscription. We shall notify You as and when such upgrades become available and the basis upon which any additional Fees may become payable.

4. YOUR USE OF THE SUBSCRIPTION SERVICES

We provide the Subscription Services and the Deliverables in order to assist You in assessing the suitability and aptitude of candidates in Your recruitment processes and employees in your performance, development and team working processes. However, You should never use the Subscription Services, Deliverables and in particular the Profile Results in isolation in order to inform a decision and it's Your sole responsibility for any conclusions You draw from the same.

5. YOUR RESPONSIBILITIES

(a) You must:

- (i) ensure that your network and systems comply with the relevant specifications, security, information security, technical procedures and use restrictions provided by Us from time to time;
- (ii) always use the Subscription Services and Deliverables in accordance with best industry practice; and
- (iii) always use the Subscription Services in accordance with Our Fair Use Policy as described in Schedule 4.

(b) You must not:

- (i) infringe any Intellectual Property Rights that belong to or are licensed to Us;
- (ii) create, upload, download, access, store, distribute, transmit or introduce onto Thomas Assess any Malicious Code, programs, viruses, malware, or other types of malicious software or material, or links to such software, that are unlawful, insider or confidential information, advertisements or solicitation for any products or services, or could disrupt or harm the proper operation of Thomas Assess or incite another to do so; or copy, reverse engineer, decompile, disassemble or modify Thomas Assess, or any part, feature, function or user interface thereof, or otherwise reduce to human-perceivable form all or any part of Thomas Assess (except to the extent permitted pursuant to Applicable Regulations), or use or attempt to use any automated program to access Thomas Assess or to search, display, or obtain links to any part of Thomas Assess.
- (iv) use the Subscription Services in a way which in Our reasonable opinion is not within the intended developed use of such Subscription Services;
- (v) engage in abusive or excessive usage of the Subscription Services;
- (vi) make any Subscription Services available to, or use any Subscription Services for the benefit of, anyone other than You, unless and to the extent expressly stated otherwise in an Order or the Documentation;
- (vii) (unless otherwise agreed in writing by Us or unless We otherwise waive this requirement) lend, sell, resell, license, sublicense, distribute, make available, rent or lease any of the Subscription Services in a service bureau or outsourcing offering;
- (viii) access or use any Subscription Services in order to build a competitive solution or service or to benchmark with a solution not provided by Us;
- (ix) remove any of Our third-party names, trademarks, copyright notices or other proprietary notices; or
- (x) use any Subscription Services and/or the Documentation in Your own products or services, commercially exploit or otherwise make any Subscription Services and/or Deliverable available to any third party in any way (unless We otherwise waive this requirement), or create any derived data or products utilising any of the same;
- (xi) disclose the Security Details to anyone other than a Thomas Assess Admin User.

6. THOMAS ASSESS ACCOUNT

6.1 You shall appoint Thomas Assess Admin Users who shall be the only users permitted to access and manage the Thomas Assess Account.

6.2 Any appointed Thomas Assess Admin User may; (a) only access Thomas Assess and the Subscription Services strictly in accordance with the Terms and Your instructions; and (b) may have their access suspended and/or removed upon notice at Our reasonable discretion if We have a reasonable reason for doing so.

7. LICENCE GRANT

7.1 Licences

We grant to You:

- (i) a non-exclusive, non-transferable, limited-term, revocable licence to access and/or use Thomas Assess, the Subscription Services and the Deliverables during the Term solely for the Your internal business purposes; and
- (ii) a perpetual, non-exclusive, non-assignable, royalty-free, revocable licence to use the Profile Results subject to clause 17.4(b) solely for your internal business purposes.

7.2 Marketing

Neither party shall undertake any marketing activities contemplating the use of the other party's name, service marks, trademarks or logos, without that party's prior written consent.

8. FEES AND PAYMENT

8.1 You will pay all Fees in accordance with the provisions of this clause 8 and as specified in the Order.

8.2 Fees are based on Subscriptions Services purchased and may also be charged based on usage or other metrics or parameters set out in the Order.

8.3 Unless expressly agreed otherwise in writing by Us (in an Order, or otherwise): (a) payment obligations are non-cancellable, (b) Fees paid are non-refundable, (c) all Fees are paid annually in advance and (d) quantities or levels of usage purchased cannot be decreased during the Term, Order Term or relevant Subscription Period (as applicable).

8.4 You agree that you will fulfil your obligation to pay the Fees by the date on which payment is due and that We and/or Our authorised payment providers has permission to retain Your payment information and method submitted by You and Your issuing bank. We are authorised to charge the Fees, using the established payment method and the information You have provided to Us and that is stored in the Your account as of the applicable date for payment.

8.5 Unless otherwise stated in an Order or otherwise agreed by Us in writing:

- (a) invoiced Fees are due net thirty (30) days from the invoice date;
- (b) You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information; and

8.6 If any invoiced amount is not received by Us by the due date, then without limiting Our rights or remedies those Fees may accrue late interest at the rate of four per cent (4%) above the Bank of England base rate of the outstanding balance per year, or the maximum rate permitted by law, whichever is lower; and/or We may cancel or suspend this Agreement, the Subscription Services, access to Thomas Assess, the provision of the Subscription Services, Documentation and/or Deliverables (or any part of them) and/or any existing Orders (including future renewals or deliveries) made by You in whole or in part.

8.7 Our Fees do not include any taxes or similar governmental assessments of any nature ("**Taxes**"). You are responsible for paying all Taxes associated with Your purchases and use hereunder.

- 8.8 The Subscription and Subscription Services Fees will automatically increase annually (at such date as to be determined by Us from time to time) by whichever is the greater of five (5) percent or any increase in the UK retail price index in the twelve (12) month period preceding such increase. Fees are subject to change without notice.
- 8.9 We currently accept various forms of payment for the Subscription Services including credit/debit cards and direct debit. Please refer to the Thomas Website for details of the payment methods We currently accept which can be found at [hyperlink to page].
- 8.10 In order to make payment through Our third-party provider, You may have to accept the terms of a licence agreement with that third party. You acknowledge that We have no responsibility over such third-party software or the Your use of it.
- 9. DATA PROTECTION**
- As part of the provision of the Subscription Services, personal data may be shared between You and Us. This is done on the basis of both parties determining their respective means and purpose of processing as independent controllers as set out in Schedule 2 to these Terms. For more explanation on Our position under the Data Protection Legislation, you should refer to our "Data Protection FAQs" which can be found at **Data Protection FAQ**.
- 10. INTELLECTUAL PROPERTY RIGHTS OWNERSHIP**
- 10.1 All Background IPRs shall remain vested in the relevant party that owns such Background IPRs.
- 10.2 You acknowledge that Thomas Assess, the Deliverables and Documentation are owned by and shall remain Our exclusive property or that of Our licensors or third-party providers. No rights in Thomas Assess, the Deliverables and Documentation are granted or conveyed by Us to You 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 the Deliverables and the Profile Responses shall belong to, vest in and remain vested in Us unconditionally and immediately upon their creation, and You shall not have any rights in, or to, the Deliverables other than in accordance with the licence granted to You in clause 7.
- 11. SUB-CONTRACTING**
- 11.1 We may sub-contract or outsource the performance of any of Our obligations under these Terms without Your prior written consent, provided that this shall not relieve Us from Our obligations under these Terms. You may not sub-contract or outsource the performance of any of Your obligations under the Agreement.
- 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 These obligations of confidentiality shall not apply where the Receiving Party can demonstrate that the Confidential Information cannot reasonably be regarded as being 'confidential' anymore through an event or action other than one in breach of these Terms.
- 12.3 Upon the expiry of the Term and/or an Order Term (as applicable), or any earlier termination of these Terms 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.
- 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 these Terms.
- 13. AUDIT**
- 13.1 You shall grant Us and Our employees, auditors and representatives effective access to all information, systems, personnel and records which relate to Your use of Thomas Assess and the Subscription Services in order to verify compliance with these Terms. Such access may be at any time during normal business hours upon reasonable notice in the circumstances.
- 13.2 If any audit shows that the You have breached these Terms, that Thomas Assess access has been provided to anyone other than You and Your Thomas Assess Users, and/or that there has been an under-payment of Fees, then without prejudice to Our other rights and remedies:
- (a) We may disable Your Thomas Assess access immediately if the breach is not immediately rectified upon request; and
- (b) You shall pay an amount equal to any identified under-payment of Fees within fourteen (14) days of the request for payment.
- 14. WARRANTIES**
- 14.1 Our Warranties to You**
- We warrant that: (i) the Subscription Services will materially conform to the Documentation; and (ii) We will perform the Subscription Services with reasonable care and skill, in accordance with good industry practice and in a professional manner. During the Order Term, if You reasonably demonstrate that the Subscription Services are in breach of the foregoing warranties, We will at no charge to the You replace and/or re-perform such Subscription Services.
- 14.2 Disclaimer of Warranties**
- We provide the Subscription Services and Deliverables on an "as is" basis and they are not guaranteed to be uninterrupted or error free. We disclaim to the fullest extent permitted by Applicable Law, all warranties express or implied, except as expressly provided under these Terms, including without limitation, the warranties of merchantability and fitness for a particular purpose. We do not warrant that you will realise any results through the use of our Subscription Services or Deliverables. This disclaimer is integral to establishing pricing and is an essential part of these Terms.
- 15. INDEMNIFICATION**
- 15.1 We will indemnify You, Your officers, servants and agents 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 You arising out of or as a consequence of Us infringing any third-party Intellectual Property Rights ("**IPR Claim**").
- 15.2 If an IPR Claim is made against You, You shall: (a) notify Us in writing; (b) allow Us to conduct all negotiations and proceedings and give Us reasonable assistance, each at Our cost; and (c) make no adverse admission.
- 15.3 If at any time an allegation of infringement of Intellectual Property Rights is made or there is likely to be such an infringement, We shall, at Our option: (a) replace or modify the Subscription Services with non-infringing substitutes, provided that such substitutes do not adversely affect the performance or material functionality of the relevant Subscription Services; or (b) procure for You the right to continue receiving the Subscription Services, provided that there is no material adverse effect on including any reduction in the scope of use of the Subscription Services.
- 16. LIMITATION OF LIABILITY**
- 16.1 Nothing in the Agreement shall exclude or limit any liability of either party for: (a) fraud or fraudulent misrepresentation; (b) death or personal injury caused by a party's negligence, or the negligence of its employees, agents or subcontractors (as applicable); (c) losses arising from breach of the provisions of clauses 12 or 15 and (d) any other liability that may not be restricted, or excluded, as a matter of law.
- 16.2 Subject to clause 16.1, neither party shall under any circumstances whatsoever be liable to the other in equity (including restitution), contract, tort (including negligence), breach of statutory duty, or in any other way, for any loss of profits, business or revenues, loss of anticipated savings, loss of goodwill, business interruption, loss of data (including use or receipt of data) or indirect, special, incidental, consequential, or exemplary damages suffered or incurred, in each case whether direct or indirect, and regardless of whether whichever is applicable of You or Us has been advised of the possibility of such losses or damages.
- 16.3 Subject to clauses 16.1, 16.2 and 16.4 and save in respect of claims for unpaid Fees payable under the Agreement the total aggregate liability of either party 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 and fifty percent (150%) of the total amount paid by You under the applicable Order giving rise to the liability in the previous twelve (12) months under which the liability arose.

16.4 Subject to clause 16.1, either party's liability to the other arising out of or related to a breach of clause 9 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.

17. TERM AND TERMINATION

17.1 Term

- (a) The Agreement commences on the Subscription Start Date and shall continue until the Subscription has terminated or expired ("Term").
- (b) Each Order will commence on the applicable Subscription Start Date and will continue, unless terminated earlier, for the relevant Order Term.
- (c) If You do not want to enter into a Renewed Subscription Period you must give Us no less than thirty days' prior written notice before the end of the then-current Subscription Period.

17.2 Termination

(a) Mutual Termination

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 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 if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

(b) Our Termination

- (i) Without prejudice to any other rights or remedies We may have under or in accordance with the Agreement, We 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 You in the event that any circumstances arise which permit Us to suspend the Subscription Services pursuant to clause 18.
- (ii) In the event of any breach of the Agreement or any non-payment by You, then, in circumstances in which We are entitled to terminate the Agreement, We may (at Our discretion) instead opt for any other action in the given circumstances in lieu of termination.
- (iii) We may terminate the Agreement for convenience at any time to take effect at the end of the then current Subscription Period.
- (iv) We may terminate a Subscription at any time upon sixty (60) days' written notice to You. In this event, We shall refund the pre-paid Subscription Fee on a pro-rated basis.

17.3 Payment upon termination

- (a) If the Agreement and/or any Order(s) are terminated by Us in accordance with clause (i) or (ii), You must pay any unpaid Fees under the Agreement to Us.
- (b) In no event will the termination or expiry of the Agreement or any Order (in whole or in part and howsoever caused) relieve You of Your obligation to pay any Fees payable to Us for the period prior to the effective date of termination.

17.4 Consequences of Termination

- (a) Where the Agreement is terminated in part, or where an Order is terminated either in full or in part, the remainder of the Agreement and/or such partially terminated Order in effect as at the date of termination shall otherwise continue in full force and effect.
- (b) Upon termination or expiry of the Agreement in whole or in part and/or any Order, in relation to the Subscription Services You will no longer have access to the Subscription Services or the Profile Results.
- (c) 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.

18. OUR SUSPENSION RIGHTS

- 18.1 We may at any time suspend the Subscription and/or Subscription Services, or any part of them, if in Our reasonable opinion We believe that You a Candidate, a Thomas Assess Admin User or a Thomas Assess User's use of the Subscription and/or Subscription Services or Deliverable constitutes a valid reason for suspension which can be taken to include but not be limited to a breach of these Terms.
- 18.2 In any case of suspension in accordance with clause 18.1 We reserve the right to determine, at Our sole discretion and without liability, whether to reinstate access to or operation of the Subscription Services, and/or permanently disable access to or operation of the Subscription Services and terminate this Agreement and/or any Order in whole or in part immediately on written notice to You.

19. FORCE MAJEURE

Neither party shall be liable for any delay or failure to perform its obligations under the Agreement, if such delay or failure to perform is due to a Force Majeure Event and 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 (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.

20. CHANGES

- 20.1 We may change these Terms, the Subscription and/or the Subscription Services from time to time at Our sole discretion. Any such changes will be posted on the Thomas Website and We may provide notification of changes via email or via the Subscription Services. In the event We make a change to these Terms, the Subscription and/or the Subscription Services which is to Your material detriment:
 - (a) We shall provide You with reasonable notice in writing by email; and
 - (b) You shall be entitled to terminate this Agreement and/or any Orders provided You give fourteen (14) days' notice of such termination to Us within fourteen (14) days of receiving Our notification of the change.

21. NOTICES

- 21.1 Any notice required to be given under the Agreement may be in writing and shall be delivered by recorded delivery post to the other party at its address set out in the Agreement.
- 21.2 Notices under the Agreement can be validly served by e-mail. Any notices sent by e-mail to You shall be sent to the email address given to Us at the time of registration, or such other email address as may have been notified by You at a later date; and to Us shall be sent to finance@thomas.co.uk with the subject line "Written Notice Relating to Our Agreement".

22. GENERAL

22.1 Governing Law and Jurisdiction

- (a) 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, except for those provisions or clauses which explicitly dictate the application of another law for particular purposes.
- (b) 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.

22.2 Entire Agreement

- (a) The Agreement, constitutes the entire agreement and understanding between the parties in respect of its subject matter and supersede any previous agreement or understanding (written or oral) made before the Subscription Start Date by, or on behalf of, the parties and relating to its subject matter.
- (b) Each party confirms that it has not relied upon and, 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.
- (c) Neither party shall be entitled to the remedies of rescission or damages for misrepresentation (unless fraudulent) arising out of, or in connection with, any agreement, warranty, statement, representation or undertaking whether or not it is set out in the Agreement.

22.3 Assignment

- (a) Subject to clause 22.3(b) 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).
- (b) We may assign, novate or otherwise transfer any or all of Our rights and/or obligations under the Agreement at any time on notice in writing to You.
- (c) Subject to the foregoing, the Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

22.4 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.

22.5 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.

22.6 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.

22.7 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.

22.8 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.

22.9 Severance

If any provision (or any part of any provision) of the Agreement is, or becomes illegal, invalid or unenforceable in any respect it shall not affect or impact the legality, validity or enforceability of any other provision of the Agreement and 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.

22.10 Variation

Except in respect of any changes made pursuant to clause 20, the Agreement shall not be modified or amended unless in writing and signed on behalf of You and Us by each party's respective duly authorised representatives.

SCHEDULE 1: DEFINITIONS AND INTERPRETATIONS

- "Agreement"** means these Terms and each Order under it, all as may be varied from time to time;
- "Applicable Regulations"** means all laws and regulations as applicable in the countries where the Subscription Services and Deliverables are provided, which are in force from time to time during the Term;
- "Background IPRs"** means Intellectual Property Rights that belong to or are licensed to a party prior to the Subscription Start Date and all developments, modifications and/or enhancements of the same; and/or that are generated or acquired after the Subscription Start Date;
- "Candidate"** means those individuals who You invite to complete Profiles for Your recruitment purposes;
- "Confidential Information"** means any information which is disclosed by one party to the other whether before or after the Subscription Start 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, Security Details and all information derived from any of the above together with the existence, negotiation or provisions of the Agreement;
- "Deliverables"** means the items which are produced, delivered and/or otherwise made available to You as outputs of the Subscription Services, whether tangible or intangible, and which shall include Profile Results but not Profile Responses;
- "Documentation"** means any description of the Subscription Services, Deliverables, technical specifications, user manuals, operating manuals, process definitions, policies and procedures, as updated from time to time;
- "Fees"** mean the charges levied by Us in accordance with the tariffs, scales, charges, invoicing methods and terms of payment as set out in clause 8 and each applicable Order;
- "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;
- "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 "moral" rights), database rights, design rights, semiconductor topography rights, mask work rights, trademarks 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;
- "Order"** means an online quotation issued by Us to You, or such other form of order as may be used by Us from time to time. The Order will specify; i) the organisation/entity and/or if applicable the team/division/function licensed to use the Subscription Services; ii) the Subscription Services; iii) any applicable usage boundaries or limitations; iv) the Fees and payment schedule; v) the Subscription Period; vi) the Subscription Start Date and vii) if applicable any other transaction-specific terms and conditions and/or Service Module Terms. An Order is binding upon the earliest to occur of the date: (a) You are provided access to and use of the Subscription Services; or (b) you confirm acceptance of the online quotation or such other form of order as may be used by Us.
- "Order Term"** means; (a) the period stated in any applicable Order; (b) where no such period is stated the period from the Subscription Start Date until the Order is terminated in accordance with these Terms;
- "Thomas Assess Account"** means the online account set up and administered by the Thomas Assess Admin User on Thomas Assess;
- "Thomas Assess Admin User"** means the permitted users who are appointed by You in order to send invitations to Candidates to complete Profiles, view Profile Results and anything else needed for Your use and administration of the Subscription and Subscription Services in respect of both Candidates and Thomas Assess Users. We will notify you as to whether such users will require any training or accreditation in order to use the Subscription Services and if so whether an additional Fee will be payable;
- "Thomas Assess User"** means those individuals (other than Candidates) who You have designated to interact with Thomas Assess and otherwise use the Subscription Services;
- "Profile"** means an online assessment of one or more questions created by or on behalf of Us and completed by a Candidate or a Thomas Assess User via Thomas Assess;
- "Profile Response"** means each completed or partially completed response to a Profile by a Candidate or a Thomas Assess User;
- "Profile Results"** means any reports or outcomes created by Us from a Profile Response and made available to You through Your use of the Subscription Services;
- "Security Details"** means passwords or other security measures provided or offered by Us to You;
- "Service Module Terms"** means such additional terms as may be necessary to cover Our provision of additional services to You outside of the Subscription Services and as referenced in an Order.
- "Subscription"** means a subscription for Your use of Thomas Assess and the Subscription Services purchased by You;
- "Subscription Services"** means the specific SaaS services, Support Services and where applicable Training and Enablement Services for which You have purchased a Subscription as described in an Order and in accordance with "Fair Usage" as described in the Supplemental Subscription Terms;
- "Subscription Start Date"** means the start date for Your Subscription as stated in the Order;
- "Supplemental Subscription Terms"** means those additional terms relating to the Subscription as set out in Schedule 4;
- "Support Services"** means those services provided to support Your use of the Subscription Services as described in Schedule 3;
- "Term"** means the term of the Agreement, as specified under clause 17.1;
- "Terms"** means these terms and conditions, any applicable Service Module Terms, Schedules and annexes, together with any incorporated documents;
- "Thomas Assess"** means Our proprietary online software platform accessed by You in order to utilise Our Subscription Services and/or Deliverables;
- "Thomas Website"** means www.Thomas.co;
- "Training and Enablement Services"** means such training and enablement services as may be made available as part of the Subscription Services and which are subject to our standard Service Module Terms for training.
- "We, Us, Our"** means Thomas International Limited or the entity identified as such in the relevant Order.
- "You" "Your"** means the specific company(s) as identified in the Order which is agreeing to purchase the Subscription Services from Us.

SCHEDULE 2 – DATA SHARING ADDENDUM

1. INTRODUCTION

- 1.1 In Your use of the Subscription Services, personal data may be shared between Us and You. This is done so on the basis of both parties determining their respective means and purpose of processing as independent controllers.
- 1.2 Additionally, the parties have opted to enter into whichever applies of the UK or EU's standard contractual clauses for controller to controller data exports. The clauses in this Schedule which are incorporated into the Agreement, will allow for the continued lawful transfer of personal data outside of whichever applies of the UK or the EEA to any third country outside of the UK or EEA that currently requires SCCs in order to allow for the lawful exportation of personal data outside of the UK or EEA.

2. DEFINITIONS AND INTERPRETATION

These capitalised terms have the following meaning:

"Data Exporter" means any of the Parties to this Agreement who transfers (by way of a Relevant Transfer) Exported Personal Data to a Data Importer;

"Data Importer" means any of the Parties to this Agreement who receives (by way of a Relevant Transfer) Exported Personal Data from the Data Exporter;

"Data Protection Legislation" means the EU Data Protection Regulation 2016/679 ("**GDPR**"), as transposed into domestic legislation 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;

"Exported Personal Data" means personal data exported by a Data Exporter to a Data Importer by way of a Relevant Transfer pursuant to this Agreement;

"Onward Transfer" means the onward transfer of Exported Personal Data by a Data Importer to a third person in circumstances where in the absence of the obligations created by clause 3.5 the transfer would place the relevant Data Exporter in breach of the Data Protection Legislation;

"Relevant Transfer" means a transfer of Personal Data between any party to this Agreement in circumstances where in the absence of the obligations created within clause 3.5 the export of the Personal Data would be in breach of the Data Protection Legislation;

"SCCs" means either (as the case may be):

- a) the standard contractual clauses for data transfers between an EU controller and a non-EU countries controller enacted under EC decision 2021/914/EC; or
 - b) any standard contractual clauses approved by the UK government for the export of Personal Data from a UK based controller to a non-UK controller;
- Capitalised terms not otherwise defined shall have the same meanings as in the relevant Data Protection Legislation, "Processed" and "Process" shall be construed in accordance with the definition of "Processing".

To the extent that the Terms specifically address terms relating to data sharing between Thomas and the Account Holder, the terms of clause 3 shall take precedence.

3. DATA PROTECTION

- 3.1 Each party must provide co-operation to the other in respect of compliance with this Schedule and shall at the request of a party, provide the other party with evidence of compliance with its obligations under this Schedule.
- 3.2 You shall ensure that You clearly specify the likely transfers of Personal Data that You might make to Us in connection with this Agreement in all relevant communications with data subjects, and in Your privacy policies and fair processing notices.
- 3.3 Each party will comply with their respective obligations under the Data Protection Legislation in the performance of their obligations under this Agreement. This Clause 3.3 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 3.4 The parties acknowledge that for the purposes of the Data Protection Legislation each will act as a separate and independent controller (as defined by the Data Protection Legislation) in relation to the personal data they process in the exercise of their rights and the performance of their obligations under the Agreement and this Schedule.
- 3.5 In the event of a Relevant Transfer (and for the avoidance of doubt, only in the event of a Relevant Transfer), the obligations stated in this clause 3.5 shall apply.
- (a) The provisions of the SCCs shall be considered incorporated into the terms of this Agreement and shall apply in respect of exports of Exported Personal Data to a Data Importer subject to the following amendments (such amendments as required only to give full effect to the SCCs and not amend them as prohibited by recital (3) of the SCCs):
 - (i) for the purposes of each Relevant Transfer the parties shall treat clause 2(h) of the SCCs as having been selected as roman numeral "iii" and initialled by the relevant Data Importer;
 - (ii) Annex B (Description of the Transfer) shall be as stated in the Schedule to this Agreement; and
 - (iii) none of the optional clauses shall apply.
 - (b) To the extent that relevant Data Protection Legislation in a certain jurisdiction requires additional contractual terms to ensure an adequate level of protection in respect of a Relevant Transfer the parties agree to use best endeavours to complete and effect the relevant document necessary to comply with the SCCs and any Data Protection Legislation promptly and in any event within 14 days.
 - (c) In the case of any Onward Transfers the Data Importer shall procure that the entity receiving the Personal Data upon the Onward Transfer observes the same obligations as those imposed on the Data Importer under the original Relevant Transfer.

ANNEX 1 TO SCHEDULE 2: DESCRIPTION OF PERSONAL DATA PROCESSING

In accordance with Schedule 2, where a party is acting as a Data Exporter the following provisions shall apply:

Data subjects	
The personal data transferred concern the following categories of data subjects:	<ul style="list-style-type: none"> • Current, former and prospective customers (including You); • Candidates, Thomas Assess Users, Thomas Assess Admin Users; and • Current and former employees of You and/or Us (including any consultants).
Purposes of the transfer(s)	
The transfer is made for the following purposes:	<ul style="list-style-type: none"> • The nature and purpose of the Processing of the Personal Data are set out in the Agreement. • The purposes may include, but are not limited to: <ul style="list-style-type: none"> ◦ the Processing of Personal Data relating to the You, Candidates, Thomas Assess Users, Thomas Assess Admin Users and/or Our consultants or employees as a result of interactions relating to this Agreement and the provision of the Subscription Services 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 Subscription Services and related services; and ◦ the Processing of Personal Data for research purposes, including using Candidate and Thomas Assess Users' Personal Data to create an anonymised form of such Personal Data.
Categories of data	
The personal data transferred concern the following categories of data:	<p>The Personal Data may include:</p> <ul style="list-style-type: none"> • address • title • preferred salutation • telephone number • email address • contact information • date of birth/age • country of residence • [occupation] • employer • languages spoken • bank account details • educational attainment • individual performance data – demographics for trend analysis/predictive analysis/benchmarks
Recipients	
The personal data transferred may be disclosed only to the following recipients or categories of recipients:	Only to those persons necessary to transfer any personal data to for the performance of any obligations under the Agreement.
Sensitive data (if appropriate)	
The personal data transferred concern the following categories of sensitive data:	n/a
Data protection registration information of a data exporter (where applicable)	n/a
Additional useful information (storage limits and other relevant information)	n/a

SCHEDULE 3 – SUPPORT SERVICES

- We shall use all reasonable endeavours to make the Subscription Services available on Thomas Assess twenty-four (24) hours per day, seven (7) days per week provided such availability shall exclude any planned or unplanned maintenance on Thomas Assess provided that We shall use all reasonable endeavours to give You prior notice of such unavailability.
- We shall provide you with support services between the United Kingdom business hours of 08:00 – 17:30 GMT
- Support assistance is available by submitting an email request through: support@thomas.co.uk / Thomas Assistant chatbot on www.thomas.co and Product website pages.
- To receive support assistance, requests must be made by a registered administrator via Thomas Assess. We must be able to reproduce errors in order to resolve them. You will cooperate fully with Us to achieve resolution of any requests. Emails to the above support email address are received by the Thomas Customer Success team in the first instance. Depending on the nature of the reported issue, it may require assistance from our second line support team who have specific knowledge of the affected Subscription Services. A third line support team offers further and deeper technical interventions for issues that require it.
- Email requests must contain:
 - ✓ Date and time of issue occurrence
 - ✓ The user(s) affected by the issue
 - ✓ Description of the issue
 - ✓ Screenshots or video capture of the issue
 - ✓ Description of the suggested priority level of the issue
- We will not be responsible for providing Support Services for issues arising from:
 - ✗ Improper use of the Thomas Assess.
 - ✗ You don't maintain a sufficiently fast and reliable internet connection and use a browser environment which complies with Our guidelines
 - ✗ If access requires downloading additional browser plug-ins, We shall not be responsible for such third-party plug-in
 - ✗ Modifications, integrations, or customizations made to Thomas Assess by anyone other than Us

Response Priority Level. We will review the issue and determine a priority level as defined below:

Priority Level	Description
"Critical"	The entire Thomas Assess platform is not working
"High"	A major component of the Thomas Assess platform is not working that materially restricts the use or performance of the Thomas Assess platform
"Medium"	A minor component or enhancement to the Thomas Assess platform is not working but is only causing a minor impact on the operation of the Thomas Assess platform
"Low"	A problem that does not restrict the operation of the Thomas Assess platform

We shall use all reasonable commercial efforts to resolve requests for Support Services either by finding a workaround or fixing the issue in accordance with the following time periods:

Priority Level	First Response Times	Target Resolution Times
"Critical"	Within 4 business hours	Within 24 business hours
"High"	Within 24 business hours	Within 2 business days
"Medium"	Within 1 week	As soon as reasonably practicable
"Low"	At Our discretion	At Our discretion

SCHEDULE 4 – SUPPLEMENTAL SUBSCRIPTION TERMS

1. Your Subscription and licence to use the Subscription Services is limited solely to the organisation(s)/entities and/or if applicable, team/division/function specified in the Order. If during any Subscription Period You wish to make the Subscription Services available to other related organisations/entities and/or if applicable team/division/function, You will need Our prior written approval and additional Fees may become payable.
2. Thomas Assess Users – The number of Thomas Assess Users able to use the Subscription Services will be set out in the Order.
3. Candidates and Our "Fair Use Policy" – The Fee for the use of the Subscription Services You have purchased for use by Candidates is based upon our estimation of Your expected usage based upon an organisation/entity of Your size and We will regularly monitor Your usage during the Subscription Period. If during a Subscription Period, Your organisation's usage increases beyond what we would reasonably expect, for whatever reason, including but not limited to growth in Your organisation through merger and acquisition or otherwise, we will discuss with You prior to the start of the next Renewed Subscription Period whether such increased usage may require moving the Subscription to a higher tier Fee to reflect such increased usage.
4. Unless point 1 above applies, any Renewal will (subject to any price increase permitted under these Terms) be at the same Fee as the then current Subscription Period.
5. For the purposes of any Order, any discount applied to the current Subscription Period shall be applicable to the current Subscription Period only and shall not apply to any Renewals.
6. Training and Enablement Services will only be available if sold as part of the Subscription Services and identified in the Order.