

**1. STRUCTURE AND SCOPE OF THE AGREEMENT**

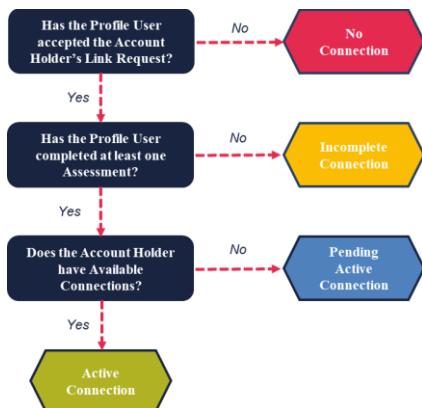
- 1.1 This Agreement creates a contractual framework between the Account Holder and Thomas under which:
  - (a) the Account Holder enters into the Terms so it may execute Orders in order to purchase Subscriptions, Solutions and related services and/or Deliverables; and
  - (b) Thomas agrees the terms on which it shall provide such Subscriptions, Solutions and related services and/or Deliverables.
- 1.2 If a Solution to be provided under an applicable Order has additional Solution-specific terms, each applicable Service Module shall form a part of the relevant Order, whether by directing the Account Holder to electronic copies of the Service Module or otherwise.
- 1.3 In the event of any conflict or ambiguity, the order of precedence for the Agreement shall be as follows:
  - (a) the applicable Order;
  - (b) the applicable Service Module;
  - (c) the body of these Terms;
  - (d) the appendices to these Terms;
  - (e) the Documentation; and
  - (f) 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 Subscriptions, Solutions and related Deliverables.
- 1.5 Subject to clause 1.6, during the Term the Account Holder may order the provision of Subscriptions and Solutions from Thomas by any valid method (an "Order").
- 1.6 An Order shall, upon execution, become incorporated into, and subject to, the Agreement in respect of the Subscription, Solution and related Deliverables set out therein and shall incorporate any relevant Service Module terms. Once an Order is agreed by the parties, to be valid and effective it must be confirmed in writing and 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.

**2. PROVISION OF SUBSCRIPTIONS**

- 2.1 Thomas will provide and the Account Holder will receive and have use of a Subscription in accordance with the Agreement. A Subscription shall:
  - (a) commence from the date set out in the relevant Order and continue for an initial term of twelve (12) months ("Initial Subscription Period"); and
  - (b) subject to clause 20.2, 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".
- 2.2 Thomas shall use reasonable endeavours to make the Subscription and associated Thomas Perform access available twenty-four (24) hours per day, seven (7) days per week, provided:
  - (a) such availability shall exclude any planned or unplanned maintenance on Thomas Perform provided that Thomas shall use reasonable endeavours to give the Account Holder prior notice of such unavailability;
  - (b) the Account Holder maintains a sufficiently fast and reliable internet connection and uses a browser environment which complies with Thomas guidelines; and
  - (c) if access requires downloading additional browser plug-ins, Thomas shall not be responsible for such third-party plug-ins nor ensuring that the Account Holder complies with any terms and conditions which may apply to them.

**3. SUBSCRIPTION LIMIT, RETENTION POLICY AND RECONNECTION RULES**

- 3.1 The Account Holder shall purchase a Subscription for a maximum number of Active Connections during each Subscription Period, which shall be as set out in an Order ("Subscription Limit"). The Active Connections will be determined by Thomas as follows:



- 3.2 Subject to clause 3.3, the Account Holder acknowledges and agrees that:
  - (a) a Connection may be disconnected at any time upon notice by the Profile User and/or Thomas on their behalf;
  - (b) an Active Connection shall be automatically disconnected by Thomas upon expiry of the relevant Retention Period; and
  - (c) each Active Connection shall count towards the Subscription Limit only once for the duration of the relevant Retention Period, even if the Active Connection is later disconnected for whatever reason; and
  - (d) the Subscription Limit does not mean concurrent Active Connections and as such once each Active Connection has been made the Account Holders Subscription Limit shall be reduced by one.
- 3.3 In the event that an Active Connection has been disconnected by the Profile User, the Account Holder shall be entitled to have continued access to such Active Connection's Profile Snapshot for the remainder of the relevant Retention Period. For the avoidance of doubt, this right shall not apply to the extent that the Account Holder:
  - (a) does not have an active Subscription; and/or
  - (b) is the party which has actively deleted or disconnected the Active Connection.
- 3.4 The Subscription shall automatically renew with the same Subscription Limit as the prior Subscription Period (including any increases and/or upgrades) at Thomas' standard rates. As set out in the below example, the following rules will apply to the Retention Period and any reconnections:
 

**Example:** An Account Holder enters into an Initial Subscription Period on 1<sup>st</sup> January 2021. Profile User A becomes an Active Connection on 1 February 2021 with a Retention Period of 12 months (expiring on 31 January 2022). This new Active Connection will count towards the Account Holder's Subscription Limit at this stage, reducing the total number of Available Connections by one. If:

  - neither party disconnects and the Account Holder has an ongoing active Subscription (i.e. enters into a Renewed Subscription Period following the end of the Initial Subscription Period), the Account Holder will have continued access to all of Profile User A's Assessments and content until 31 January 2022 (the end of the Retention Period);
  - the Account Holder disconnects between 1 February 2021 and 31 January 2022, the Account Holder will lose all access to Profile User A's Assessments and content and will have no access to the Profile Snapshot;
  - Profile User A disconnects before 31 January 2022, the Account Holder will not be able to see any new Assessments completed by Profile User A but can access the Profile Snapshot created by Thomas on the disconnection date until 31 January 2022 (the end of the Retention Period);
  - the Account Holder and Profile User A are disconnected and reconnect before 31 January 2022, the reconnection will not count towards the Account Holder's Subscription Limit and will be considered a continuation of the existing Retention Period. This means that the Account Holder will be able to access all of Profile User A's Assessments and content again until 31 January 2022 (the end of the Retention Period);
  - the Account Holder and Profile User A are disconnected and reconnect after 31 January 2022, the reconnection with Profile User A will be treated as a new Active Connection which will count towards the Account Holder's Subscription Limit and which has a Retention Period starting on the reconnection date.
- 3.5 **Increases**
  - (a) The Account Holder may increase its Subscription Limit at any time during a Subscription Period by submitting an Order to Thomas. In such case, Thomas' standard Fees for the level of additional Subscription access being requested shall be payable by the Account Holder in accordance with clause 10.
 

*Example: The Account Holder has purchased a Subscription Limit consisting of 1000 Active Connections at the beginning of a Subscription Period. Later on in the Subscription Period, the Account Holder requests an increased Subscription Limit to access 500 more Active Connections. To effect the increase, the Account Holder will need to pay Thomas' standard rates for a Subscription Limit of 500 Active Connections. After payment is received, the Account Holder will have a new Subscription Limit of 1500 Active Connection for the current Subscription Period and each subsequent period, unless it is further increased or decreased in accordance with whichever applies of clause 3.5 or 3.6.*
  - (b) A Subscription Period shall in no circumstances be extended by virtue of the Account Holder increasing its Subscription Limit in accordance with clause 3.5(a).
- 3.6 **Decreases**
  - (a) The Account Holder may only decrease its Subscription Limit ("Decreased Limit") by giving at least thirty (30) days' written notice to Thomas prior to the end of the relevant Subscription Period.
  - (b) No other Subscription Limit decreases are permitted during an existing Subscription Period.
- 3.7 The Account Holder shall not exceed its Subscription Limit during any Subscription Period. For the avoidance of doubt this shall mean that once the Account Holder reaches its Subscription Limit, a Connection to a

Complete Profile may only result in a Profile User becoming a Pending Active Connection. The Account Holder shall not be entitled to view the details of any Pending Active Connection until the Subscription Limit is increased in accordance with clause -, at which point any Pending Active Connections shall become Active Connections.

#### 4. SUBSCRIPTION UPGRADES

- 4.1 Thomas may from time to time introduce new features to its Thomas Perform offering which do not form part of the Account Holder's Subscription. Thomas shall notify the Account Holder as and when such upgrades become available.
- 4.2 The Account Holder may elect to upgrade its Subscription to benefit from newly available premium features at any time during a Subscription Period by submitting an Order to Thomas. In such case, the amounts paid by the Account Holder for the relevant Subscription Period will be set off against the new total Fee for the Subscriptions. The amounts outstanding after such set-off shall be payable in accordance with clause 10.

#### 5. INTRODUCTORY SUBSCRIPTION OFFERS

- 5.1 The Account Holder's Subscription may start with an introductory offer.
- 5.2 Unless otherwise agreed in an Order, an introductory offer and associated Fees will be valid for the Initial Subscription Period only. With effect from the end of the Initial Subscription Period, Thomas will reinstate its standard Subscription Fees.
- 5.3 Eligibility for an introductory offer will be determined by Thomas at its sole discretion.

#### 6. PROVISION OF SOLUTIONS

- 6.1 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).
- 6.2 Thomas shall provide, deliver or otherwise make available the Solution(s) and/or Deliverable(s) with reasonable skill and care, in a timely manner and in accordance with the provisions of the Agreement (including any relevant Services Modules and Documentation). Notwithstanding clauses 19.1 to 19.3 of these Terms, in the event of any breach of this clause, Thomas will at its sole expense use commercially reasonable endeavours to re-supply the relevant Solution and/or Deliverable in a manner which conforms to this clause. This shall be the Account Holder's sole and exclusive remedy for such breach.

#### 7. USE OF SUBSCRIPTION AND SOLUTIONS

##### 7.1 "Account Holder Obligations"

- (a) The Account Holder shall:
- (i) provide to Thomas all necessary co-operation in relation to these Terms and any Order, and all necessary access to such information as may be required by Thomas in order to provide Subscriptions and Solutions including but not limited to Account Holder Data, security access information and configuration services;
  - (ii) carry out all Account Holder Obligations in a timely and efficient manner;
  - (iii) ensure that the Account Holder's network and systems comply with the relevant specifications and use restrictions provided by Thomas from time to time and comply with any security, information security and technical procedures and requirements in relation to the Subscriptions, Solutions and/or Deliverables; and with respect to Assessment Results in particular:
    - (A) not use such Assessment Results in isolation in order to guide or inform a decision;
    - (B) assume sole responsibility for any conclusions drawn from the Assessment Results (and resultant content); and
    - (C) always use such Assessment Results in accordance with best industry practice.
  - (b) The Account Holder is responsible for having an appropriate Account Holder Environment to receive and/or enable the use of the Subscriptions, Solutions and/or Deliverables, and obtaining any relevant third-party software licences. Thomas shall not be liable for any incompatibility, failure, use or misuse by the Account Holder of the Account Holder Environment.

##### 7.2 Use Restrictions

- (a) The Account Holder must not:
- (i) infringe any Intellectual Property Rights that belong to or are licensed to Thomas;
  - (ii) create, upload, download, access, store, distribute, transmit or introduce into Thomas Perform or any Solution and/or Deliverable 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 Perform or such Solution and/or Deliverable or incite another to do so; or
  - (iii) copy, reverse engineer, decompile, disassemble or modify Thomas Perform, 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 Thomas Perform or any Solution and/or Deliverable (except to the extent permitted pursuant by Applicable Regulations), or use or attempt to use any automated program to access Thomas Perform or any Solution and/or

Deliverable, or to search, display, or obtain links to any part of Thomas Perform, a Solution and/or Deliverable.

- (b) 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 7.2(a).
- (c) The Account Holder must not:
- (i) knowingly withhold information which may affect Thomas' ability to provide the Subscriptions, Solutions and/or Deliverables to the Account Holder or to others (including Perform and/or Profile Users), or the security or integrity of Thomas Perform or any of the Solutions and/or Deliverables;
  - (ii) use any Subscriptions, Solution and/or Deliverable to impersonate any person, or to misrepresent the Account Holder's, or any other Perform and/or Profile User's identity;
  - (iii) engage in sending unsolicited messages to any number or users or via the internet by using any Solution and/or Deliverable;
  - (iv) use the Subscriptions, Solutions and/or Deliverables in a way which in Thomas' reasonable opinion is not within the intended developed use of such Subscription, Solution and/or Deliverable;
  - (v) engage in abusive or excessive usage of any Subscription, 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 Subscription, Solution and/or Deliverable for other users;
  - (vi) make any Subscription, Solution and/or Deliverable available to, or use any Subscription, 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;
  - (vii) (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 Subscription, Solution and/or Deliverable, or include any Subscription, Solution and/or Deliverable in a service bureau or outsourcing offering;
  - (viii) access or use any Subscription, Solution and/or Deliverable in order to build a competitive solution or service or to benchmark with a non-Thomas solution or service;
  - (ix) remove any Thomas or third-party names, trademarks, copyright notices or other proprietary notices; or
  - (x) use any Subscription, Solution, Deliverables and/or the Documentation in the Account Holder's own products or services, commercially exploit or otherwise make any Subscription, Solution and/or Deliverable available to any third party in any way (unless Thomas otherwise waives this requirement), or create any derived data or products utilising any of the same.

#### 8. PERFORM USERS

- 8.1 The Account Holder shall appoint Thomas Perform Users who shall be the only users permitted to access Thomas Perform and be provided with access to Subscriptions, Solutions, Deliverables and/or Documentation.
- 8.2 Any appointed Perform User:
- (a) may only access Thomas Perform, the Subscription, Solutions, Deliverables and related services strictly in accordance with the terms of this Agreement and the Account Holder's instructions; and
  - (b) may have their access suspended and/or removed upon notice at Thomas' reasonable discretion.

#### 9. LICENCE GRANT

##### 9.1 Licences

- (a) Subject to clauses 9.1(b) and (c), Thomas grants to the Account Holder:
- (i) a non-exclusive, non-transferable, limited-term, revocable licence to access and/or use Thomas Perform and any Subscriptions, Solutions, Deliverables and/or Assessment Data during the Term solely for the Account Holder's internal business operations; and
  - (ii) strictly and only to the extent required by the Account Holder to use the Deliverables and/or Assessment Data, and to receive the Subscriptions and Solutions, a limited-term, non-exclusive, non-assignable, royalty-free, revocable licence to use Thomas Background IPRs as necessary for this limited purpose.
- (b) The licences granted under clause 9.1(a) shall apply other than to the extent that additional licence(s) are required by and granted in accordance with any of the Service Modules.
- (c) The Account Holder must have a valid Subscription in order to access Thomas Perform and benefit from the licences granted under clause 9.1(a).
- (d) The Account Holder grants to Thomas and applicable contractors:
- (i) 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 Subscription, Solution 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 Subscription, Solution and/or Deliverable(s),

as reasonably necessary for Thomas to provide the applicable Subscription, Solution 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 all or part of any Subscription, Solution and/or Deliverable(s) in accordance with the Agreement; and

- (ii) 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.

## 9.2 Marketing

Either party shall not 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 in each instance.

## 10. FEES AND PAYMENT

- 10.1 The Account Holder will pay all Fees in accordance with the provisions of this clause 10 and as specified in the Order.
  - 10.2 Fees are based on Solutions and/or Subscriptions purchased and may also be charged based on usage or other metrics or parameters set out in the relevant Service Module and/or Order.
  - 10.3 Unless expressly agreed otherwise in writing by Thomas (in an Order, Service Module or otherwise): (a) payment obligations are non-cancellable, (b) Fees paid are non-refundable, and (c) quantities or levels of usage purchased cannot be decreased during the Term, Order Term or relevant Subscription Period (as applicable).
  - 10.4 The Account Holder agrees that it will fulfil its obligation to pay the Fees by the date on which payment is due and that Thomas has permission to retain the Account Holder's payment information and method submitted by the Account Holder and its issuing bank. 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.
  - 10.5 Unless otherwise stated in a Service Module, Order or agreed by Thomas in writing:
    - (a) invoiced Fees are due net fourteen (14) days from the invoice date;
    - (b) 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; and
    - (c) in respect of Subscriptions, Thomas shall invoice the Account Holder:
      - (i) on the Order Commencement Date for Subscription Fees payable in respect of the Initial Subscription Period; and,
      - (ii) subject to clause 20.2, at any time after the date which is thirty (30) days prior to each anniversary of the Order Commencement Date for Subscription Fees payable in respect of the next Renewed Subscription Period.
  - 10.6 If any invoiced amount is not received by Thomas by the due date, then without limiting its 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 Thomas may cancel or suspend the Agreement, a Subscription, access to Thomas Perform, the provision of Solutions, Documentation and/or Deliverables (or any part of them) and/or any existing Orders (including future renewals or deliveries) made by the Account Holder in whole or in part.
  - 10.7 Thomas' Fees do not include any taxes or similar governmental assessments of any nature ("Taxes"). The Account Holder is responsible for paying all Taxes associated with its purchases and use hereunder.
  - 10.8 Thomas may review and decide to increase the Subscription Fees (or any part of them) on an annual basis with effect from the start of each Renewed Subscription Period, provided such increase shall be no more than the percentage increase in the retail price index in the preceding twelve (12) month period. Fees are subject to change without prior notice.
- ## 11. DATA PROTECTION
- 11.1 The Account Holder must provide co-operation to Thomas in respect of compliance with this clause 11.1 and shall at the request of Thomas, provide Thomas with evidence of compliance with its obligations under the Agreement.
  - 11.2 The Account Holder shall ensure that it clearly specifies the likely transfers of Personal Data that it might make to Thomas in connection with this Agreement in all relevant communications with data subjects, and in its privacy policies and fair processing notices.
  - 11.3 Each party will comply with their respective obligations under the Data Protection Legislation in the performance of their obligations under this Agreement. This clause 11.3 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
  - 11.4 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 this Agreement.

*Explanatory text to clause 11.5 below: The UK has left the EU and is now in a "transition period". During this period the current rules on trade, travel, and business for the UK and EU will continue to apply, this includes the rules relating to the GDPR and data cross border data transfers.*

*It is currently not possible to predict exactly what contractual provisions will be required to appropriately and legally allow for the free transfer of personal data across borders when the UK is seen, from the GDPR's perspective as a "third country". Clause 11.5 of this Agreement is a way of ensuring that regardless of what happens following the transition period, personal data that is transferred pursuant to this Agreement is done responsibly and legally from the perspective of both the UK and the EU.*

*The provisions of clause 11.5 only apply in the event of a "Relevant Transfer". This is effectively a transfer of personal data that would not be lawful unless "standard contractual clauses" (clauses that protect individual's personal data to the same level as that required currently under the GDPR) are put into place between the parties. Read more about standard contractual clauses [here](#).*

- 11.5 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 11.5 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 Schedule 2 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 require 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.
- ## 12. ACCOUNT HOLDER ENVIRONMENT AND SECURITY REQUIREMENTS
- 12.1 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 Subscription, Solution and/or Deliverable has been or may be compromised.
  - 12.2 In order to ensure the integrity of the Subscriptions, Solutions and Deliverables, Thomas reserves the right, at its sole discretion, and without liability, to do anything which it reasonably believes is required in order to protect its systems, 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.
- ## 13. INTELLECTUAL PROPERTY RIGHTS OWNERSHIP
- 13.1 All Background IPRs shall remain vested in the relevant party that owns such Background IPRs.
  - 13.2 The Account Holder acknowledges that Thomas Perform, 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 Thomas Perform, 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.
  - 13.3 All Intellectual Property Rights in:
    - (a) the Deliverables (including the content of Assessment Responses received in response to any Assessment Invites);
    - (b) 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 ("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 Results, other than in accordance with the licence granted to the Account Holder in clause 9.1(a). 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 13.3.



- 13.4 Subject to clause 13.3, 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.
- 13.5 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.
- 13.6 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.

#### 14. SUB-CONTRACTING

- 14.1 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. The Account Holder may not sub-contract or outsource the performance of any of its obligations under the Agreement.

#### 15. CONFIDENTIALITY

- 15.1 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 15. 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 15.
- 15.2 The obligations of confidentiality set out in this clause 15 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 this Agreement.
- 15.3 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.
- 15.4 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.
- 15.5 Each party acknowledges that its breach of this clause 15 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 15 shall survive the termination or expiration of the Agreement.

#### 16. AUDIT

- 16.1 The Account Holder shall grant Thomas and its employees, auditors and representatives effective access to all information, systems, personnel and records which relate to its use of Thomas Perform (including any Subscriptions, Solutions, Documentation and Deliverables) in order to verify compliance with the Agreement. Such access may be at any time during normal business hours upon reasonable notice in the circumstances.
- 16.2 If any audit shows that the Account Holder has breached the Agreement, that Thomas Perform access has been provided to anyone other than the Account Holder and its Perform Users, and/or that there has been an underpayment of Fees, then without prejudice to Thomas' other rights and remedies:
- Thomas may disable the Account Holder's Thomas Perform access immediately if the breach is not immediately rectified upon request; and
  - the Account Holder shall pay an amount equal to any identified underpayment of Fees within fourteen (14) days of the request for payment.

#### 17. REPRESENTATIONS AND DISCLAIMERS

##### 17.1 Representations

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

##### 17.2 Disclaimers

- The provision of the Subscriptions, Solutions and Deliverables are provided on an "as is, where is" basis and are not guaranteed to be uninterrupted or error free.
- 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:
  - make no representations or warranties of any kind, whether express, implied, statutory or otherwise regarding the Subscriptions, 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
  - disclaim all warranties, including any implied or express warranties.

#### 18. INDEMNIFICATION

- 18.1 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:
- an unlawful or negligent act or omission by the Account Holder; and/or
  - an infringement of any third-party Intellectual Property Rights.
- 18.2 Thomas will indemnify and undertakes to keep the Account Holder, 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 the Account Holder arising out of or as a consequence of an Thomas infringing any third-party Intellectual Property Rights ("IPR Claim").
- 18.3 If an IPR Claim is made against the Account Holder, the Account Holder shall:
- notify Thomas in writing of any IPR Claim;
  - allow Thomas to conduct all negotiations and proceedings and give Thomas reasonable assistance, each at Thomas' cost, regarding the IPR Claim; and
  - make no adverse admission relating to the IPR Claim.
- 18.4 If at any time an allegation of infringement of Intellectual Property Rights is made or there is likely to be such an infringement, Thomas shall, at its option:
- replace or modify the Solutions with non-infringing substitutes, provided that such substitutes do not adversely affect the performance or material functionality of the relevant Solutions; or
  - procure for the Account Holder the right to continue receiving the Solutions, provided that there is no material adverse effect on (including any reduction in the scope of use of) the Solutions.

#### 19. LIMITATION OF LIABILITY

- 19.1 Nothing in the Agreement shall exclude or limit any liability for:
- fraud or fraudulent misrepresentation;
  - death or personal injury caused by a party's negligence, or the negligence of its employees, agents or subcontractors (as applicable);
  - losses arising from breach of the provisions of clauses 7.2(a), 15, and 18; or
  - any other liability that may not be restricted, or excluded, as a matter of law.
- 19.2 Subject to clause 19.1, 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 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 Thomas has been advised of the possibility of such losses or damages.
- 19.3 Subject to clauses 19.1 and 19.2, in the event of any loss or damage to the Account Holder's Content which is inputted into Thomas Perform, the Account Holder's sole and exclusive remedy shall be for Thomas to use reasonable endeavours to restore the lost or damaged Content from the latest back-up of such Content maintained by Thomas, provided that Thomas shall not be responsible for any loss, destruction, alteration or disclosure of Content caused:
- by any third party (except those third parties sub-contracted by Thomas to perform services related to Content maintenance and back-up); or
  - as a result of any breach by the Account Holder of the Agreement.
- 19.4 Subject to clause 19.1, 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:
- if any invoiced amount remains unpaid by the Account Holder after the due date for payment of such invoiced amount; or
  - 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.
- 19.5 Subject to clauses 19.1, 19.2, 19.3 and 19.6 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 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.
- 19.6 Subject to clause 19.1, either party's liability to the other party arising out of or related to a breach of clause 11 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.
- 19.7 Subject to clause 19.1, Thomas will not be liable for breach of any of the terms of the Agreement which in Thomas' reasonable opinion arises from or is in relation to any misuse (or unauthorised use including unauthorised

use in accordance with clause 8), alteration, unauthorised customisation, failure or delay of Thomas Perform, the Subscriptions, Solutions and/or Deliverables caused by anyone other than Thomas or someone authorised by Thomas.

- 19.8 For the avoidance of doubt, the calculation of each liability cap at clauses 19.5 and 19.6 shall be based on Fees paid, net of any deductions that have been properly made.

## 20. TERM AND TERMINATION

### 20.1 Term

- (a) The Agreement commences on the Effective Date and shall continue until all Subscriptions and Solutions hereunder have been provided, terminated or expired ("Term").
- (b) Each Order will commence on the applicable Order Commencement Date and will continue, unless terminated earlier, for the relevant Order Term.

### 20.2 Subscription Expiry

- (a) The Account Holder must notify Thomas of its intention not to renew its Subscription no later than thirty (30) days before the end of the then-current Subscription Period, in which case the Subscription will automatically expire and any Connections will be disconnected at the end of such Subscription Period.
- (b) If the Account Holder has invoked its right under clause 20.2(a) to end its Subscription but later places an Order with Thomas for a new Subscription ("New Subscription"), Thomas' treatment of the New Subscription will depend on the time that has lapsed since the last Subscription Period:
- (i) **Up to 3 months.** The New Subscription will be effective from the date set out in the Order and the Account Holder shall be granted access to any relevant Profile Snapshots created by Thomas at the end of the last Subscription Period. Any associated Retention Periods shall continue to run from their original start date(s).
- (ii) **More than 3 months.** The New Subscription will be effective from the date set out in the Order and set up as if the Account Holder were an entirely new customer with no access to any Profile Snapshots, reconstituted or historic Connections, Documentation, Content and/or Deliverables (including any Assessment Results or related data).

### 20.3 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 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.
- (b) **Thomas Termination**
- (i) 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 21.
- (ii) Thomas may terminate a Subscription at any time upon sixty (60) days' written notice to the Account Holder. In this event, Thomas shall refund the pre-paid Subscription Fee on a pro-rated basis.
- (iii) 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 opt for any other action in the given circumstances in lieu of termination.

### 20.4 Payment upon termination

- (a) If the Agreement and/or any Order(s) are terminated by Thomas in accordance with clause 20.3(b)(i) or 20.3(b)(iii), the Account Holder must pay any unpaid Fees under the Agreement to Thomas.
- (b) 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.

### 20.5 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 Terms 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 Solution and/or Subscription being terminated:
- (i) the Account Holder must immediately cease using such Solution and/or Subscription 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 15; and

- (ii) 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.
- (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.

## 21. THOMAS SUSPENSION RIGHTS

- 21.1 Thomas may at any time suspend the Subscription and/or any Solution, Deliverable, or any part of them, if in its reasonable opinion Thomas believes that the Account Holder's or a Perform User's use of the Subscription and/or any Solution or Deliverable constitutes a valid reason for suspension.

- 21.2 In any case of suspension in accordance with clause 21.1 Thomas reserves the right to determine, at its sole discretion and without liability, whether to reinstate access to or operation of the affected Subscription, Solution and/or Deliverable and/or permanently disable access to or operation of the affected Subscription, Solution and/or Deliverables and terminate this Agreement and/or any Order in whole or in part immediately on written notice to the Account Holder.

## 22. FORCE MAJEURE

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 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.

## 23. CHANGES

- 23.1 Thomas may change these Terms, the Subscription and/or any of its Solutions from time to time 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. In the event Thomas makes a change to these Terms, the Subscription or the Solutions which is to the material detriment of the Account Holder:

- (a) Thomas shall provide the Account Holder with reasonable notice in writing by email; and
- (b) the Account Holder shall be entitled to terminate this Agreement and/or any Orders provided the Account Holder provides fourteen (14) days' notice of such termination to Thomas within fourteen (14) days of receiving Thomas' notification of the change.

## 24. NOTICES

- 24.1 Any notice required to be given under the Agreement shall be in writing and shall be delivered by recorded delivery post to the other party at its address set out in the Agreement.
- 24.2 Notices under the Agreement can be validly served by e-mail. Any notices sent by e-mail 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 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 Agreement".

## 25. GENERAL

### 25.1 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.

### 25.2 Entire Agreement

- (a) The Agreement, constitutes the entire agreement and understanding between the parties in respect of its subject matter and supersedes any previous agreement or understanding (written or oral) made before the Effective 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, subject to clause 25.2(d), 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) Subject to clause 25.2(d), 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.
  - (d) Nothing in the Agreement shall restrict or exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.
- 25.3 Assignment**
- (a) Subject to clause 25.3(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) 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.
  - (c) Subject to the foregoing, the Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 25.4 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.
- 25.5 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.
- 25.6 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.
- 25.7 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.
- 25.8 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.
- 25.9 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.
- 25.10 Variation**
- Except in respect of any changes made pursuant to clause 23, 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.

## SCHEDULE 1: DEFINITIONS AND INTERPRETATIONS

- 1 **"Account Holder"** means the company which is agreeing to purchase a Subscription and any Solutions 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 into Thomas Perform or otherwise provided by the Account Holder, any Perform Users or Thomas on the Account Holder's or any Perform User's behalf, for the purpose of using Thomas Perform or for facilitating the Account Holder's or any Perform User's use of Thomas Perform;
- "Account Holder Environment"** means the combination of hardware, software, telecommunications links, systems and other material (or any constituent parts) made available or used by the Account Holder (whether directly or through a service provider) or as used or interfaced to by Thomas (including Thomas sub-contractors);
- "Active Connection"** means a Connection has been made and that at the time it was made the following both apply:
- the Connection is to a Complete Profile; and
  - the Account Holder has Available Connections;
- "Available Connections"** means the maximum number of Connections that are available to be made as set out in the Subscription Limit less the Active Connections;
- "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 the Subscription and 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 and completed via the Thomas Platform;
- "Assessment Invite"** means, as a part of the Subscription, the creation by Thomas of an invite for a Profile User to respond to an Assessment;
- "Assessment Result"** means an outcome or insight in respect of a Profile User created out of the application of the Thomas Platform to such Profile Users' Assessment Response;
- "Assessment Response"** means each completed or partially completed response to an Assessment by a Profile User;
- "Background IPRs"** means Intellectual Property Rights that 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 that are generated or acquired after the Effective Date, but excluding the Deliverables;
- "Complete Profile"** means that the relevant Profile User's Thomas Profile contains at least one completed Assessment;
- "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, all Account Holder Data, Security Details and all information derived from any of the above together with the existence, negotiation or provisions of the Agreement;
- "Connection"** means that a Profile User has accepted a Link Request;
- "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, its Subscription and/or any Solution, but which excludes the Deliverables;
- "Data Exporter"** means any party to this Agreement which transfers (by way of a Relevant Transfer) Exported Personal Data to a Data Importer;
- "Data Importer"** means any party to this Agreement which receives (by way of a Relevant Transfer) Exported Personal Data from the Data Exporter;
- "Data Protection Legislation"** means the EU Data Protection Directive 95/46/EC ("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;
- "Deliverables"** means the items which are produced, delivered and/or otherwise made available to the Account Holder as outputs of its Subscription and/or the Solutions, whether tangible or intangible, and which shall include Assessments and Assessment Results;
- "Documentation"** means a description of the Subscription, 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 (i) the date on which the Account Holder ticks a box online indicating its acceptance to, or otherwise accepts, these Terms; or (ii) the date on which the Account Holder first executes an Order to purchase any Solution and/or Subscription under the Agreement;
- "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;
- "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 100 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;
- "Incomplete Connection"** means that a Connection has been made to an Incomplete Profile;
- "Incomplete Profile"** means that the relevant Profile User's Thomas Profile does not contain any completed Assessments;
- "Intellectual Property Rights"** means:
- 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, trademarks and service marks;
  - all registrations or applications to register any of the items referred to in paragraph (a); and
  - 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;
- "Link Request"** means the Account Holder has requested that a Profile User allows their Thomas Profile account to be connected to the Account Holder's Thomas Perform account;
- "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 Thomas Perform and/or a Solution, including, for example, an application that is developed by or for the Account Holder;
- "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 11.5 the transfer would place the relevant Data Exporter in breach of Data Protection Legislation;
- "Order Commencement Date"** means the date of the second party's acceptance of the terms relating to the applicable Order in accordance with clause 1.5;
- "Order"** means a written ordering document or an online order specifying the Subscription (and/or Subscription Limit increase), Solutions 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:
- the period stated in any applicable Order; or
  - where no such period is stated, the period from the Order Commencement Date until the Order is terminated in accordance with its terms;
- "Pending Active Connection"** means that a Connection has been made and the following both apply:
- the Connection is to a Complete Profile; and
  - the Account Holder has no Available Connections;
- "Perform User"** means the permitted users who are appointed by the Account Holder in order to:
- send Link Requests and Assessment Invites to Profile Users;
  - view the Assessment Results (including any resulting content) and Thomas Profile details of Active Connections; and/or
  - be notified of any Pending Active Connections (if applicable).
- "Personal Data"** has the meaning given to it in the Data Protection Legislation;
- "Profile Snapshot"** means a snapshot of an Active Connection's Thomas Profile and Assessment Results (including any resulting content) as at the date it is disconnected by Thomas or the relevant Profile User;
- "Profile User"** means an individual using Thomas Profile;
- "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 11.5 the export of the Personal Data would be in breach of the Data Protection Legislation;
- "Retention Period"** means the maximum period the Account Holder may access an Active Connection's Thomas Profile and Assessment Results either in full or as a Profile Snapshot (as applicable), which shall be the earlier to occur of either (i) twelve (12) months (or such shorter agreed period) from the date a Connection becomes an Active Connection or (ii) the end of the Subscription Period following which there has been no Renewed Subscription Period;
- "SCCs"** means either (as the case may be):
- the standard contractual clauses for data transfers between an EU controller and a non-EU countries controller enacted under EC decision 2004/915/EC; or
  - any equivalent standard contractual clauses as those clauses stated in (a) above approved by the UK government for the export of Personal Data from a UK based controller to a non-UK controller following the UK and EU's 'transition period';
- "Security Details"** means passwords or other security measures provided or offered by Thomas to the Account Holder;

"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;

"Solutions" means the various solutions and services that are made available by Thomas from time to time;

"Subscription" means the annual subscription purchased by the Account Holder under an Order to use and/or access various Solutions up to the Subscription Limit pursuant to these Terms;

"Subscription Limit" has the meaning given to it in clause 3.1;

"Subscription Period" has the meaning given to it in clause 2.1;

"Term" means the term of the Agreement, as specified under clause 20.1(a);

"Terms" means these terms and conditions, the relevant Service Module, 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 Perform" means the Thomas talent assessment platform accessed by the Account Holder in order to utilise Subscriptions, Solutions and related services and/or Deliverables;

"Thomas Platform" means the various Subscriptions, 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 including, but not limited to, Thomas Perform and Thomas Profile;

"Thomas Profile" means the Thomas system accessed by Profile Users in order to:

- (a) receive Assessment Invites, complete Assessments and view Assessment Results; and
- (b) connect with Thomas Perform accounts for the purposes of sharing Profile User content (including any Assessments and Assessment Results); and

"Thomas Website" means [www.thomas.co](http://www.thomas.co).

## 2. 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) unless otherwise stated to the contrary, "day" means a calendar day and "month" means a calendar month;
- (d) 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;
- (e) 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;
- (f) within clause 11 capitalised terms not otherwise defined and "Personal Data" 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", 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; and
- (g) a party may be either a Data Exporter and/or a Data Importer in respect of Exported Personal Data and references in this Agreement to "Data Exporter" or "Data Importer" shall be construed accordingly to the particular parties involved in each Relevant Transfer.



**SCHEDULE 2: DESCRIPTION OF PERSONAL DATA PROCESSING**

In accordance with clause 11.5, where a party is acting as a Data Exporter the following provisions shall apply:

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