

MASTER TERMS AND CONDITIONS

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, under which it can execute Orders in order to purchase Solutions and related services and/or Deliverables; and
 - (b) Thomas agrees the terms on which it shall provide such Solutions and related services and/or Deliverables.
- 1.2 Each Solution specified to be provided under an applicable Order shall be provided in accordance with the relevant Solution-specific terms set out in Service Modules, whereby each such applicable Service Module shall form a part of the relevant Order, whether by directing the Account Holder to electronic copies of the applicable Service Module 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 Solutions and related Deliverables.
- 1.5 Subject to clause 1.6, during the Term the Account Holder may order the provision of Solutions from Thomas by any valid method which shall be taken to include but not be limited to the use of an Order Form, a request for Solutions made on the Thomas Platform, by email or by letter (an "Order").
- 1.6 An Order Form shall, upon execution, become incorporated into, and subject to, the Agreement in respect of the Solution and related Deliverables set out therein and shall incorporate the relevant Service Module terms. Once an Order Form 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. In the case of Orders not involving the use of an Order Form, 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 SOLUTIONS

- 2.1 Thomas will provide, and the Account Holder will receive and have use of, the Solutions and related Deliverables in accordance with the Agreement for the Term or Order Term (as may be applicable), whereby:
- (a) each Solution and/or Deliverable specified to be provided under an applicable Order shall be provided in accordance with the relevant Service Module applicable to such Order and substantially in accordance with the Documentation; and
 - (b) Thomas shall provide, deliver or otherwise make available such Solution and/or Deliverable(s) with reasonable skill and care, in a timely manner and in accordance with the other provisions of this Agreement.

3. USE OF SOLUTIONS

3.1 "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 the 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 Solutions and/or Deliverables; and
 - (iv) with respect to Assessment Responses in particular:
 - (A) not use such Assessment Responses in isolation in order to guide or inform a decision; and
 - (B) always use such Assessment Responses in accordance with best industry practice.

- (b) The Account Holder is responsible for having an appropriate Account Holder Environment to receive and/or enable the use of the 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.

3.2 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, 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 such Solution and/or Deliverable or incite another to do so; or
 - (iii) copy, reverse engineer, decompile, disassemble or modify a Solution and/or Deliverable or any part, feature, function or user interface thereof, or otherwise reduce to human-perceivable form all or any part of any Solution and/or Deliverable (except to the extent permitted pursuant by Applicable Regulations), or use or attempt to use any automated program to access any Solution and/or Deliverable, or to search, display, or obtain links to any part of a Solution and/or Deliverable.
- (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 3.2(a).
- (c) The Account Holder must not:
- (i) knowingly withhold information which may affect Thomas' ability to provide any of the Solutions and/or Deliverables to the Account Holder or to others (including other Platform Users), or the security or integrity of any of the Solutions and/or Deliverables;
 - (ii) use any Solution and/or Deliverable to impersonate any person, or to misrepresent the Account Holder's or any other Platform 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 Solutions and/or Deliverables in a way which in Thomas' reasonable opinion is not within the intended developed use of such Solution and/or Deliverable;
 - (v) engage in abusive or excessive usage of any Solution and/or Deliverable, which is usage significantly in excess of average usage patterns that adversely affects the speed, responsiveness, stability, availability, or functionality of any Solution and/or Deliverable for other users;
 - (vi) make any Solution and/or Deliverable available to, or use any Solution and/or Deliverable for the benefit of, anyone other than the Account Holder, unless and to the extent expressly stated otherwise in an Order or the Documentation;
 - (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 Solution and/or Deliverable, or include any Solution and/or Deliverable in a service bureau or outsourcing offering;
 - (viii) access any Solution and/or Deliverable in order to build a competitive solution or service or to benchmark with a non-Thomas solution or service;
 - (ix) remove any Thomas or third-party names, trademarks, copyright notices or other proprietary notices; or
 - (x) use any Solution, Deliverables and/or the Documentation in the Account Holder's own products or services, commercially exploit or otherwise make any 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.

4. PLATFORM USERS

In respect of each Platform Licence granted in accordance with Service Module 1 (Platform Licence Terms), the Account Holder shall appoint Thomas Platform users who shall be the only users permitted to access the Thomas Platform and be provided with Solutions, Deliverables

and/or Documentation in accordance with the Platform User's specified Identity, and whereby any appointed Platform User may only access the Thomas Platform, Solutions, Deliverables and related services strictly in accordance with the terms of this Agreement and the Account Holder's instructions.

5. LICENCE GRANT

5.1 Licences

- (a) Subject to clause 5.1(b), Thomas grants to the Account Holder:
- (i) a non-exclusive, non-transferable, limited-term, revocable licence to use the Solutions, Deliverables and/or Assessment Data during the Term and/or the Order Term (as applicable) solely for the relevant Permitted Purpose(s); and
 - (ii) strictly and only to the extent required by the Account Holder to use the Deliverables and/or Assessment Data, and to receive the Solutions, a limited-term, non-exclusive, non-assignable, royalty-free, revocable licence to use Thomas Background IPRs as necessary for this limited purpose.
- (b) The licence granted under clause 5.1(a) above shall apply other than to the extent that additional licence(s) are required by and granted in accordance with any of the Service Modules.
- (c) 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 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 Solution and/or Deliverable(s),

as reasonably necessary for Thomas to provide the applicable 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 any 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.

5.2 Marketing

Unless otherwise notified in writing to Thomas by the Account Holder, Thomas shall have both during and after the Term the right to use the Account Holder's name, service marks, trademarks or logos and examples of work and services completed and provided to Thomas by the Account Holder in its marketing, publicity, promotional activity and materials.

6. IDENTITIES

- 6.1 Account Holders may have access to one or more Identities when using the Thomas systems and each Identity may present the Account Holder with different options and functionality.
- 6.2 Account Holders should be aware of which Identity they are using whenever interacting with the Thomas systems, and remain responsible for all acts performed in each Identity to which they have access. Where an Identity allows an Account Holder ("**acting Account Holder**") to perform actions on behalf of another Account Holder ("**represented Account Holder**") (for example an Account Holder who works in a corporate HR team, and as a result has access to an Identity representing the separate Account Holder corporate entity that is their employer, where the employee would be the acting Account Holder and the employer the represented Account Holder for these purposes) those actions are deemed performed both by the acting Account Holder in their personal capacity and by the represented Account Holder, and both Account Holders are jointly and severally liable for any consequences of actions performed by the acting Account Holder via such Identity.
- 6.3 If an Account Holder believes that they have access to an Identity that they should not have access to, then they must:
- (a) immediately cease any use of that Identity completely; and

- (b) immediately notify Thomas of such issue, providing all details and such reasonable assistance as Thomas may require to diagnose and remedy any issues related to such incorrect Identity access.

7. FEES AND PAYMENT

- 7.1 The Account Holder on whose behalf the relevant Solution and/or Assessments have been Ordered will pay all Fees in accordance with the provisions of this clause 7 and as specified in the Order.
- 7.2 Fees are based on Solutions purchased and may also be charged based on usage or other metrics or parameters set out in the relevant Service Module and/or Order. Unless expressly provided otherwise in a Service Module and/or Order, payment obligations are non-cancellable and Fees paid are non-refundable. Unless expressly provided otherwise in a Service Module and/or Order or otherwise agreed in writing in advance with Thomas, quantities or levels of usage purchased cannot be decreased during the relevant Term or Order Term.
- 7.3 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.
- 7.4 Unless otherwise stated in a Service Module or Order, invoiced Fees are due net fourteen (14) days from the invoice date. The Account Holder is responsible for providing complete and accurate billing and contact information to Thomas and notifying Thomas of any changes to such information.
- 7.5 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 or any other existing Orders (including future renewals or deliveries) made by the Account Holder in whole or in part.
- 7.6 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.
- 7.7 The Fees will automatically increase annually (at such date as to be determined by Thomas from time to time) by whichever is the greater of five (5) percent or any increase in the Australian retail price index in the twelve (12) month period preceding such increase. Fees are subject to change without prior notice.

8. DATA PROTECTION

- 8.1 The Account Holder must provide co-operation to Thomas in respect of compliance with this clause 8 and shall at the request of Thomas, provide Thomas with evidence of compliance with its obligations under the Agreement.
- 8.2 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 taking into account the applicable Data Protection law in the country in which the Account Holder currently resides or is established.
- 8.3 Each party will comply with their respective obligations under the Data Protection Legislation and/or any other applicable Data Protection law in the performance of their obligations under this Agreement. This Clause 8 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation and/or any other applicable Data Protection law.
- 8.4 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.
- 8.5 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 8.5 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 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.

9. ACCOUNT HOLDER ENVIRONMENT AND SECURITY REQUIREMENTS

- 9.1 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 Solution and/or Deliverable has been or may be compromised.
- 9.2 In order to ensure the integrity of the 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.

10. INTELLECTUAL PROPERTY RIGHTS OWNERSHIP

- 10.1 All Background IPRs shall remain vested in the relevant party that owns such Background IPRs.
- 10.2 The Account Holder acknowledges that the Solutions and Documentation are owned by and shall remain the exclusive property of Thomas or Thomas' licensors or third-party providers. No rights in the Solutions and/or Documentation are granted or conveyed by Thomas other than the limited licence to use them as set forth in the Agreement, and nothing in the Agreement will be deemed to grant a party any licence, sub-licence, copyright interest, proprietary right or other claim against or interest in the other party's Intellectual Property Rights.
- 10.3 All Intellectual Property Rights in:
 - (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 Responses, other than in accordance with the licence granted to the Account Holder in clause 5.1(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 10.3.
- 10.4 Subject to clause 10.3, the Account Holder retains ownership of all of its Intellectual Property Rights in its Content. Thomas does not claim ownership over any of the Account Holder's Content. Thomas shall only store, copy, use or access Content to the extent necessary to perform its obligations under these Terms and the relevant Order and shall not disclose it to any third party without the Account Holder's prior written approval.
- 10.5 Neither party shall be prevented or restricted from developing and using any techniques, ideas, concepts, information or know-how relating to methods or processes of general application which can be recalled only from the unaided memories of either party's personnel, provided that in doing so there is no infringement of the Intellectual Property Rights of the other party.
- 10.6 The Account Holder waives and will ensure that its employees, contractors, consultants, sub-contractors and all of its personnel waive all moral rights they might have in the Deliverables.

11. SUB-CONTRACTING

- 11.1 Thomas may sub-contract or outsource the performance of any of its obligations under the Agreement without the Account Holder's prior

written consent, provided that this shall not relieve Thomas from its obligations under the Agreement. The Account Holder may not sub-contract or outsource the performance of any of its 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 The obligations of confidentiality set out in this clause 12 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.
- 12.3 Upon the expiry of the Term and/or an Order Term (as applicable), or any earlier termination of the Agreement and/or an Order (as applicable), each party will promptly return or destroy the relevant Confidential Information of the other and any copies, extracts and derivatives thereof, except as otherwise set out in the Agreement. Upon an Account Holder ceasing to have access to a given Identity (for example, if an Account Holder has access to an Identity in their role as an employee of a company, but then leaves that employment and therefore loses that Identity), the Account Holder will promptly return or destroy all Confidential Information relating to the relevant Identity.
- 12.4 The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.
- 12.5 Each party acknowledges that its breach of this clause 12 may cause irreparable injury to the other party for which monetary damages may not be an adequate remedy. Accordingly, a party will be entitled to seek any legal or equitable remedies in the event of such a breach by the other. The operation of this clause 12 shall survive the termination or expiration of the Agreement.

13. REPRESENTATIONS AND DISCLAIMERS

13.1 Representations

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

13.2 Disclaimers

- (a) The provision of the Solutions and Deliverables are provided on an "as is, where is" basis and are not guaranteed to be uninterrupted or error free.
- (b) 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:
 - (i) make no representations or warranties of any kind, whether express, implied, statutory or otherwise regarding the Solutions, Deliverables and/or Documentation (and the Account Holder acknowledges that it shall not rely on any Deliverables and/ or Documentation without first verifying them); and
 - (ii) disclaim all warranties, including any implied or express warranties.

14. INDEMNIFICATION

- 14.1 The Account Holder will indemnify and undertakes to keep Thomas, its officers, servants and agents indemnified against any costs and expenses (including reasonable legal costs and the costs of any settlement) arising out of any claim, action, proceeding or demand that may be brought, made or prosecuted against Thomas arising out of or as a consequence of:
 - (a) an unlawful or negligent act or omission by the Account Holder; and/or
 - (b) an infringement of any third-party Intellectual Property Rights.
- 14.2 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 Thomas infringing any third-party Intellectual Property Rights ("IPR Claim").

- 14.3 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.
- 14.4 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.
- 15. LIMITATION OF LIABILITY**
- 15.1 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 3.2(a), 12, 14 and 15.6; or
 - any other liability that may not be restricted, or excluded, as a matter of law.
- 15.2 Subject to clause 15.1, Thomas shall not under any circumstances whatsoever be liable to the Account Holder in equity (including restitution), contract, tort (including negligence), breach of statutory duty, or in any other way, for any 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.
- 15.3 Subject to clause 15.1, Thomas shall not under any circumstances whatsoever be liable to the Account Holder in equity (including restitution), contract, tort (including negligence), breach of statutory duty, or in any other way:
- 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.
- 15.4 Subject to clauses 15.1, 15.2, 15.3 and 15.5 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.
- 15.5 Subject to clause 15.1, either party's liability to the other party arising out of or related to a breach of clause 8 will be limited to an amount equivalent to five hundred percent (500%) of all amounts paid or payable under the Agreement in the previous twelve (12) months under which the liability arose.
- 15.6 Where an Account Holder, by virtue of an Identity to which they have access, is entitled to be an acting Account Holder on behalf of a represented Account Holder (as the terms "acting Account Holder" and "represented Account Holder" are defined in clause 5), any circumstance which, but for this clause 15.6, would give rise to a right for both the acting Account Holder and the represented Account Holder to make a claim against Thomas, then only the represented Account Holder shall be entitled to bring the relevant claim, and the limitations and exclusions set out in this clause 15 shall apply to any such claim the represented Account Holder may bring. The represented Account Holder hereby indemnifies and shall keep indemnified Thomas in full and on demand against any and all costs, expenses or other consequences suffered by Thomas as a result of any claim brought or attempted to be brought by an acting Account Holder in contravention of this clause.
- 15.7 Subject to clause 15.1, Thomas will not be liable for breach of any of the terms of the Agreement which in Thomas' reasonable opinion arises from or is in relation to any misuse (or unauthorised use including unauthorised use in accordance with clause 4), alteration, unauthorised customisation, failure or delay of the Solutions and/or Deliverables caused by anyone other than Thomas or someone authorised by Thomas.
- 15.8 For the avoidance of doubt, the calculation of each liability cap at clauses 15.4 and 15.5 shall be based on Fees paid, net of any deductions that have been properly made.
- 16. TERM AND TERMINATION**
- 16.1 Term**
- The Agreement commences on the Effective Date and shall continue, unless terminated earlier, until all Solutions hereunder have been provided or have been terminated ("**Term**").
 - Each Order will commence on the applicable Order Commencement Date and will continue, unless terminated earlier, for the relevant Order Term.
- 16.2 Termination**
- 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.
 - Thomas Termination**
 - Without prejudice to any other rights or remedies Thomas may have under or in accordance with the Agreement, Thomas may terminate the Agreement (in whole or in part) and/or any or all Orders at any time during the Term with immediate effect by written notice to the Account Holder in the event that any circumstances arise which permit Thomas to suspend the Solutions and/or Deliverables pursuant to clause 17.
 - 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.
- 16.3 Payment upon termination**
- If the Agreement and/or any Order(s) are terminated by Thomas in accordance with clause 16.2(b), the Account Holder must pay any unpaid Fees under the Agreement to Thomas.
 - In no event will the termination or expiry of the Agreement or any Order (in whole or in part and howsoever caused) relieve the Account Holder of its obligation to pay any Fees payable to Thomas for the period prior to the effective date of termination.
- 16.4 Consequences of Termination**
- 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.
 - Upon termination of the Agreement in whole or in part and/or any Order, in relation to the Solution being terminated:
 - the Account Holder must immediately cease using such Solution and related Deliverable(s) and promptly destroy or deliver (at Thomas' request) all data belonging to Thomas in the Account Holder's possession to Thomas forthwith, and the Account Holder must provide certification to Thomas of any such destruction upon Thomas's request. The requirement to deliver or destroy all copies of the data shall not apply to any data that the Account Holder is required to retain under any legal or regulatory obligation (and only to the extent and for such time as is required under any such obligation), provided that such data shall be subject to confidentiality obligations in clause 12; and
 - 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.
 - Termination or expiry of the Agreement and/or any Order (in whole or in part), howsoever caused, shall not prejudice the rights and remedies of either party which may have accrued under it up to the date of termination or expiry, and shall not affect any provision of the Agreement which is expressly or by implication intended to come into or remain in effect on or after such termination or expiry.

17. THOMAS SUSPENSION RIGHTS

17.1 Thomas may at any time suspend any Solution, Deliverable, or any part of them if a Platform User is in breach of its obligations under this Agreement or, if in its reasonable opinion Thomas believes that a Platform User's continued use of any Solution and/or Deliverable is likely to;

- (a) pose a security risk to the Solution or Deliverables or any third party;
- (b) adversely impact on the quality of the Solutions or Deliverables; or
- (c) could subject Thomas to a third party liability.

17.2 In any case of suspension in accordance with clause **Error! Reference source not found.** Thomas reserves the right to determine, at its sole discretion and without liability, whether to reinstate access to or operation of the affected Solution and/or Deliverables and/or permanently disable access to or operation of the affected 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.

18. 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 Form (as applicable) with immediate effect on giving written notice to the other party and neither party will be liable to the other for the termination.

19. CHANGES

19.1 Thomas may change these Terms 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 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 14 days' notice of such termination to Thomas within 14 days of receiving Thomas' notification of the change.

20. NOTICES

20.1 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.

20.2 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 with the subject line "Written Notice Relating to the Thomas Master Terms".

21. GENERAL

21.1 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.

21.2 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 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 21.2(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 21.2(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.

21.3 Assignment

(a) Subject to clause 21.3(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.

21.4 Relationship of the Parties

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

21.5 Third Party Beneficiaries

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

21.6 Waiver

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

21.7 Cumulative Remedies

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

21.8 Further Assurance

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

21.9 Severance

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.

21.10 Variation

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

APPENDIX 1 DEFINITIONS AND INTERPRETATIONS

"Account Holder" means the individual who is agreeing (whether for itself or on behalf of a company or other legal entity) to purchase 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 to the Thomas Platform or otherwise provided by the Account Holder, any Platform Users or Thomas on the Account Holder's or any Platform User's behalf, for the purpose of using the Thomas Platform or any Platform Licence or for facilitating the Account Holder's or any Platform User's use of the Thomas Platform or any Platform Licence;

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

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

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

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

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

"Assessment Response" means each completed or partially completed response to an Assessment by a Candidate;

"Background IPRs" means Intellectual Property Rights that 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;

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

"Confidential Information" means any information which is disclosed by one party to the other whether before or after the Effective Date, which is designated in writing as confidential or would appear to a reasonable person to be confidential and which relates to a party's business, all Account Holder Data, Security Details and all information derived from any of the above together with the existence or provisions of the Agreement, and the negotiations relating to the same;

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

"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 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 the Solutions, and whether tangible or intangible and which shall include Assessments and Assessment Responses;

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

"Effective Date" means the earlier of the date on which the Account Holder ticks a box online indicating its acceptance to or otherwise accepts, these Terms; OR the date on which the Account Holder first executes an Order to purchase any Solution 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 7 and each applicable Order Form;

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

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

- as a Candidate who has Assessment Invites presented to them;
- as a Candidate who has previously taken Assessments and wishes to have access to the reports produced based on their Assessment Responses;
- as an administrative user entitled to offer Assessment Invites to Candidates and review the resulting reports based on the Assessment Responses of those Candidates;
- a user entitled only to view Assessment Responses (including for example an employee of the Account Holder with management responsibilities); or
- as a consultant working with multiple different other Account Holders;

"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, trade marks 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;

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

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

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

"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 8.5 the transfer would place the relevant Data Exporter in breach of the 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 Form" means a written ordering document or an online order form specifying the Solution 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. Unless otherwise agreed by Thomas, Order Forms must be accepted no later than thirty days from the date of issue by Thomas;

"Order Term" means:

- the period stated in any applicable Order Form relating to the 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;

"Permitted Purpose" means the specific permitted purpose(s) for which the Solution may be used as specified for the relevant Solution in the applicable Order Form and/or Service Module.

"Personal Data" has the meaning given to it in the Data Protection Legislation;

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

"Platform User" means, in respect of a Platform Licence, the permitted users who are appointed by the Account Holder in accordance with clause 4;

"Relevant Transfer" means a transfer of Personal Data that would not be lawful unless SCC's are put in place between the parties;

"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 2004/915/EC; or
- (b) 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 as described on the Thomas Website from time to time;

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

"Term" means the term of the Agreement, as specified under clause 16.1(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 Platform" means the various Solutions and related services, Deliverables, Documentation, facilities and tools offered and provided by Thomas via its online management system or otherwise via the Thomas systems, and accessed by the Account Holder subject to the terms of the Agreement;

"Thomas Website" means www.thomas.co;

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

"Unit Term" has the meaning set out in Service Module 2 (Online Services - Unit Purchase); and

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

In the Agreement, unless the context otherwise requires:

- (a) headings used are for convenience and ease of reference only, are not part of the Agreement and shall not be relevant to or affect the meaning or interpretation of the Agreement;
- (b) references to gender include all genders and words importing the singular include the plural and vice versa as the context so requires;
- (c) 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 8 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.

APPENDIX 2: DESCRIPTION OF PERSONAL DATA PROCESSING

Part 1: Thomas as Relevant Data Exporter

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 the Account Holder); • Candidates; • Platform Users (including any administrative users of the Platform); and • Current and former employees of the Account Holder and/or Thomas (including any consultants).
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 Account Holder, Candidates, Platform Users, administrative users of the Platform and/or Thomas consultants or employees as a result of interactions relating to this Agreement and the provision of the Solutions and related services; ○ the Processing of Personal Data relating to customers as a result of interactions relating to this Agreement and the provision of the Solutions and related services; and ○ the Processing of Personal Data for research purposes, including using Candidate Personal Data to create an anonymised form of such Personal Data.
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 • gender • country of residence • occupation • employer • languages spoken • bank account details • educational attainment • ethnicity • 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

Part 2: Account Holder as relevant Data Exporter

Data subjects	
The personal data transferred concern the following categories of data subjects:	<ul style="list-style-type: none"> • Current, former and prospective customers; • Candidates; • Platform Users (including any administrative users of the Platform); and • Current and former employees of the Account Holder and/or Thomas (including any consultants).
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 Account Holder, Candidates, Platform Users, administrative users of the Platform and/or Thomas consultants or employees as a result of interactions relating to this Agreement and the provision of the Solutions and related services; ○ the Processing of Personal Data relating to customers as a result of interactions relating to this Agreement and the provision of the Solutions and related services.
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 • gender • country of residence • occupation • employer • languages spoken • bank account details • educational attainment • ethnicity • individual performance data – demographics for trend analysis/predictive analysis/benchmarks
Recipient	
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