

ThoughtExchange Subscription Terms

Legal

Participant and Leader Terms of Use

Acceptable Use Policy

Policies

Privacy Policy

Sub-processors

Data Processing Addendum

Security

Security

Contact Us

If you have a concern, complaint or questions about your personal information you can reach out to privacy@thoughtexchange.com. This address will always go directly to our Data Privacy Officer. For more information, see the [When you have concerns](#) section of our privacy statement.

Last Revised: June 16, 2023

1. AGREEMENT

- 1.1. Parties. In these Subscription Terms: “you”, “your”, “Customer”, and similar terms mean the person or legal entity identified as the customer in one or more signed and dated Service Orders (as defined below); and “ThoughtExchange”, “we”, “us”, “our”, similar terms mean the ThoughtExchange entity (Fulcrum Management Solutions Ltd., Fulcrum Management Solutions Inc., or both) identified in your Service Order(s).
- 1.2. Our Services. We market and sell subscriptions to the proprietary ThoughtExchange software-as-a-service platform and related services (the “Services”). Features and functionalities of the Services are further described in the Services Descriptions attached to or incorporated by reference in the applicable Service Order (the “Services Descriptions”). You understand and acknowledge that, as is typical for a software-as-a-service platform, the Services will be changed and updated on a regular basis, and you agree that we may change, add, or remove features or functionality at any time, for any reason, and may or may not provide notice of those changes to you, so long as we do not materially decrease the functionality of the Services during the term of your subscription.
- 1.3. Agreement. Your purchase and use of the Services is governed by an Agreement between you and us (the “Agreement”) comprised of:
 - a. one or more “Service Orders”, which are documents issued by us and signed by both you and us that set out the details of your subscription to the Services, including any applicable quantities or other limits, fees and payment terms, subscription start date and term, and any additional details or terms applicable to your subscription;

b. these Subscription Terms; and

c. all other terms and documents incorporated by reference in the applicable Service Order or these Subscription Terms.

To the extent there is conflict between any of the documents listed above, the applicable Service Order (including any additional terms or documents agreed to in the Service Order) shall take precedence over these Subscription Terms, and these Subscription Terms shall take precedence over any other term or document incorporated herein by reference.

- 1.4. Rights Reserved. Subject to the limited access granted under this Agreement, we reserve all intellectual property rights, including rights in the ThoughtExchange platform and brand, and the Services, including all patent, copyright, trade secret, trademark and other proprietary rights.

2. USE OF OUR SERVICES

- 2.1. Authorized Users. Other than by External Participants (as defined below), access to and use of the Services is limited to your “Authorized Users,” which means individuals who are: (a) your employees, contractors, consultants, or personnel; and (b) identified for purposes of access by a unique email address issued by you. We will provide each Authorized User a unique login based on that email address. You are responsible for your Authorized Users’ compliance with this Agreement.
- 2.2. User Roles. As further described in the Services Descriptions, Authorized Users may be assigned roles and permissions as “Leaders”, “Participants”, or both (which may be in connection with “Exchanges”, “Surveys”, or both). In addition, Authorized Users may have permissions as “Administrators”, “Contributors”, or other roles. Leaders and other roles may be subject to quantities or other limits as specified in each applicable Service Order, however you can change the individual users to whom such roles are assigned at any time during your subscription.
- 2.3. Acceptable Use. All use of the Services by you or any of your Authorized Users must comply with the Acceptable Use Policy published at <https://thoughtexchange.com/acceptable-use-policy/> (the “Acceptable Use Policy”).
- 2.4. Internal Use & External Participation. Unless you have entered into a separate Sales Partner Agreement or as otherwise agreed by us in writing, you may use the Services solely for internal business purposes, and you may not launch or run Exchanges or Surveys or otherwise use the Services on behalf of entities who are not named in the applicable Service Order and party to the Agreement (including without limitation your clients, members, or other entities, even if affiliated or closely associated with your business or organization). Without limiting the foregoing, you may use the Services to engage Participants who are your employees, contractors, consultants, or personnel (“Internal Participants”), or Participants who are third-party individuals external to your business or organization (“External Participants”) provided such use is for your internal business purposes.
- 2.5. External Participant Terms of Use. While this Agreement sets forth the terms under which we provide the Services to you and your Authorized Users, External Participants will be required to accept the Terms of Use published at <https://www.thoughtexchange.com/participant-leader-terms-of-use/> (the “Terms of Use”), which will govern their access to and use of the ThoughtExchange platform. The Terms of Use form a separate contract between ThoughtExchange and each External Participant, which is intended to provide protections for External Participants, us, and you, and prevent abuse of the platform by External Participants. You are not a party to that separate contract, and as between you and us, this Agreement takes precedence if there is conflict between this Agreement and the Terms of Use.
- 2.6. Feedback. You or your Authorized Users may, on an entirely voluntary basis, submit feedback, user community contributions and comments, technical support information, suggestions, enhancement requests, recommendations, and messages relating to the operations, functionality, or features of the Services or other products or services (collectively, “Feedback”). You grant us a royalty-free, fully paid, non-exclusive, perpetual, irrevocable, worldwide, transferable license to display, use, incorporate into the Services, copy, modify, publish, perform, translate, create derivative works from, sublicense, distribute, and otherwise exploit Feedback without restriction.
- 2.7. Beta Services. From time to time, we may offer you the opportunity to use and test certain features or functionality prior to their commercial release as part of the Service (“Beta Services”). Use of the Beta Services is entirely at your

option, and is not required for you to use the Services purchased in your Service Order. If you choose to use any Beta Services, the Beta Terms published at <https://thoughtexchange.com/beta/> apply to and govern your access to and use of those Beta Services.

3. CONTENT AND SECURITY

- 3.1. Content. As between us, you own and shall retain all right, title and interest in and to all information collected, entered, created or otherwise provided by you, your Leaders, or Participants in the course of using the Services (your “Content”). We will obtain and process your Content solely to perform our obligations under this Agreement. Content shall be considered your Confidential Information under this Agreement. You are responsible for the accuracy, quality, content, availability, appropriateness, and legality of your Content, including how your Content is acquired and shared by you and your Authorized Users, including outside of the Services. You are responsible for the proper disclosure to and receipt of all required consents from each individual to transfer any personal information to us and to allow us to use, disclose and otherwise process such information for the purpose of providing the Services.
- 3.2. Prohibited Content. You will not, and you will ensure that your Leaders and Participants do not, upload any Prohibited Content to, or otherwise provide any Prohibited Content for processing by, the Services. You acknowledge and agree that, notwithstanding anything to the contrary, we will have no liability with respect to Prohibited Content. “Prohibited Content” means: (a) financial account or payment card information; (b) patient, medical or other protected health information; (c) social security, national identity, or similar personal identifiers; (d) “special categories of personal data” as defined under the General Data Protection Regulation, Regulation (EU) 2016/679 (GDPR); (e) any other sensitive personal data as such term (or a similar term) is defined under applicable privacy or data protection laws; (f) any data that you do not have the legal right to transfer to us; and (g) any Content that violates the Acceptable Use Policy.
- 3.3. AI Content. The Services may allow you to use features or functionality that are delivered through our use of artificial intelligence (“AI”) services, including third-party AI services identified in our subprocessor list published at <https://thoughtexchange.com/subprocessors/>. If you use those features or functionality (the “AI Features”), then as between you and us: (a) you own any input entered, created, or otherwise provided by you in the course of your use of the AI Features, and any output that is generated by your use of the AI Features and made available to you through the Services (your “AI Content”); (b) you grant to us an irrevocable, worldwide, non-exclusive right, without any further consent, notice, or payment, to use your AI Content solely to deliver, develop, and improve our services (including but not limited to the AI Features); and (c) we own all input entered, created, or otherwise provided by us, whether or not such input is displayed or disclosed to you in the course of your use of the AI Features, and any output generated through our use of AI that is not displayed or otherwise made available to you, even if generated by us in connection with your use of the AI Features.
- 3.4. Aggregated and Anonymous Data. Notwithstanding Section 3.1, you acknowledge that we may collect aggregated and anonymous data from the Services to improve our products and services, and to track certain aspects of our services, including without limitation, availability, capacity, performance, and response times. We will ensure that none of the information we gather identifies, or could be used to identify you, your Authorized Users, or your Participants.
- 3.5. Security. We implement and maintain reasonable administrative, physical, and technical safeguards intended to protect against the unauthorized access, use, disclosure, alteration, or destruction of your Content. However, since the Internet is not a 100% secure environment, we cannot ensure or warrant the security of any information that you transmit to us. There is no guarantee that information may not be accessed, disclosed, altered, or destroyed by breach of any of our physical, technical, or managerial safeguards. To learn more, please visit <https://www.thoughtexchange.com/security/>.
- 3.6. Privacy Policy. Our Privacy Policy, published at <https://thoughtexchange.com/privacy-policy/>, sets out how we collect and use any information that you or others give us in connection with your use of the Services.
- 3.7. Data Processing Agreement. If your use of the Services involves processing personal data pursuant to the GDPR and/or transferring personal data outside the European Economic Area or Switzerland to any country not deemed by the European Commission as providing an adequate level of protection for personal data, the terms of the Data

Processing Addendum published at <https://thoughtexchange.com/dpa/> (the “DPA”) shall apply to such personal data and be incorporated into this Agreement by reference.

4. CONFIDENTIALITY

- 4.1. Confidential Information. For purposes of this Agreement, “Confidential Information” shall mean all information marked as confidential or proprietary, or received under circumstances reasonably interpreted as imposing an obligation of confidentiality. It includes, but is not limited to, trade secrets and business matters such as research and development, the identity and profiles of customers and suppliers, and sales and marketing plans and information. Confidential Information does not lose its status as Confidential Information merely because it was known by a limited number of persons or entities or because it was not entirely originated by either party.
- 4.2. Confidentiality Obligations. During the performance of this Agreement, each party may receive Confidential Information from the other. Each party will treat Confidential Information as confidential and protect it from disclosure as it would its own information of a similar nature. Neither party will disclose confidential information other than to those of its employees or agents who need to know such information for performance of each party’s rights and obligations under this Agreement. Neither party will use Confidential Information for any purpose beyond the performance of its rights and obligations under this Agreement without the prior written consent of the other party. All Confidential Information shall remain the property of the disclosing party, and each party will return or destroy any tangible materials containing such Confidential Information upon request of the other party. The obligations of confidentiality and protection imposed by this Section shall not apply, or shall cease to apply, to any information that: (a) was lawfully known by either party prior to its receipt hereunder; (b) is or becomes publicly available without breach of this Agreement; (c) is lawfully received by either party from a third party who does not have an obligation of confidentiality to either party; or (d) is developed independently by employees of either party without reference to or use of Confidential Information.
- 4.3. Disclosure in Accordance with Law. A party may disclose Confidential Information to the extent required to do so by a governmental agency, by operation of law (including, without limitation, if and as required to comply with applicable freedom of information laws), or if necessary in any proceeding to establish rights or obligations under this Agreement, provided that such party, to the extent legally permissible, furnishes prior written notice of such disclosure and reasonably cooperates with the other party, in any effort to seek a protective order or other protection of the Confidential Information.

5. WARRANTIES & LIMITATIONS OF LIABILITY

- 5.1. Limited Warranty. Because the technologies underlying Services such as ThoughtExchange are inherently complex, we cannot warrant that the Services will be entirely error-free or will operate without interruption. We warrant that the Services will not infringe the intellectual property rights of any third party and that during your subscription the Services will be free from significant defects. Our sole responsibilities in the event of an error or defect in the operation of the Services are: (a) to use reasonable efforts to correct significant defects without charge; or (b) to refund a portion of the subscription price, pro-rated from the time such defects are first brought to our attention, and terminate your subscription.
- 5.2. Advice. All advice provided by us or generated by the Services is provided “as-is” and, to the greatest extent permitted by law, we expressly disclaim any and all warranties, conditions, representations, or guarantees, of any kind whatsoever, whether express, implied, statutory or otherwise, with respect to such advice. You are solely responsible for the consequences of acting on any such advice.
- 5.3. Limitation of Liability; Damages. EXCEPT FOR PAYMENT OF FEES OR A PARTY’S INDEMNITY OBLIGATIONS HEREUNDER, IT IS UNDERSTOOD AND AGREED THAT EITHER PARTY’S LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE SHALL NOT EXCEED THE AMOUNT OF THE FEES PAID BY YOU FOR SERVICES PROVIDED OVER THE PRIOR TWELVE (12) MONTH PERIOD. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSSES OR DAMAGES. THE PRICE STATED FOR THE PRODUCTS IS A CONSIDERATION IN LIMITING OUR LIABILITY. WITHOUT LIMITING THE FOREGOING, NOTHING IN THIS AGREEMENT SHALL BE INTERPRETED AS LIMITING EITHER PARTY’S LIABILITY FOR:

(A) ITS OWN GROSS NEGLIGENCE, FRAUD, OR WILLFUL MISCONDUCT; (B) BODILY INJURY OR DEATH CAUSED BY ITS ACTS OR OMISSIONS; OR (B) ANY LIABILITY THAT CANNOT BE LIMITED UNDER APPLICABLE LAW.

6. INDEMNIFICATION

- 6.1. **Obligation to Indemnify.** You and we each agree to defend, indemnify and hold the other harmless from and against any loss, damages, obligation, penalty, deficiency or liability (including, without limitation, reasonable attorneys' fees) imposed upon, incurred by or asserted against one of us that are finally determined to result from the other's infringement of a third party's intellectual property rights or material breach of confidentiality obligations under this Agreement, except to the extent such loss is caused by the acts or omissions of, or misrepresentations by, the non-breaching party, its employees or agents or third parties.
- 6.2. **Defense and Settlement.** If any demand, claim or suit is asserted or instituted with respect to which any party may be entitled to indemnification under this Agreement, then the indemnified party will: (a) give written notice of the claim to the indemnifying party promptly and in any event no later than ten (10) days after the indemnified party receives the claim; (b) give the indemnifying party sole control of the defense and settlement of the claim (provided that the indemnifying party may not enter into any settlement, compromise or consent to judgment with respect to any claim without the indemnified party's prior written consent unless such settlement, compromise or consent to judgment unconditionally releases the indemnified party of all liability); and (c) provide the indemnifying party with reasonable cooperation and assistance at the indemnifying party's expense.

7. TERM & TERMINATION

- 7.1. **Term of Agreement & Subscriptions.** The Agreement is effective upon execution of your first Service Order by both you and us, and will continue in effect until the earlier of: (a) the expiration of all of subscriptions set out in your Service Orders (including renewals, if any); or (b) the termination of this Agreement in accordance with its terms (the "Term"). The initial term of each subscription to the Services will be as set out in the applicable Service Order.
- 7.2. **Renewals.** Your subscription will automatically renew for additional twelve (12) month periods unless: (a) the applicable Service Order states otherwise; or (b) you or we give the other party written notice of non-renewal at least sixty (60) days prior to the end of the then-current term. Unless the applicable Service Order states otherwise, promotional or discounted pricing does not apply to any renewal of your subscription, and all renewals are subject to a five percent (5%) price increase above the undiscounted pricing for the prior subscription term.
- 7.3. **Termination.** Either party may terminate the Agreement: (a) if the other party fails to cure a material breach of the Agreement within thirty (30) days after written notice from the non-breaching party; (b) immediately if the other party becomes subject to any proceeding relating to bankruptcy, insolvency, receivership, liquidation, or assignment for the benefit of its creditors. If we terminate the Agreement for your material breach, you will not receive any refund and you must pay any unpaid fees for the remainder of each subscription then committed in a Service Order. In no event will termination of the Agreement relieve you of your obligation to pay any unpaid amounts for the period prior to termination.
- 7.4. **No Access After Termination or Non-Renewal.** Termination or failure to renew your subscription will result in suspension of your access to the Services at the time of termination or at the end of your paid subscription term, as applicable.

8. FEES AND PAYMENT

- 8.1. **Fees.** The fees for your Services (together with all applicable taxes, duties and levies or similar assessments) are payable in advance, either annually or in accordance with any different billing frequency stated in the applicable Service Order.
- 8.2. **Non-refundable and non-divisible commitment.** Fees are non-refundable and based on Services purchased, not actual usage. The initial term specified in a Service Order is a non-divisible, continuous commitment, regardless of the invoice schedule, and pricing is based on purchase of the Services in the specified quantity and configuration for the entire initial term (or applicable renewal term).

- 8.3. Invoices and purchase orders. Unless we agree otherwise in the applicable Service Order, we will invoice you for your subscription fees at the beginning of each annual term. Unless the applicable Service Order states otherwise, all invoiced fees are due net-30 days from the invoice date, provided that we may suspend your access to the Services for non-payment only if any undisputed fees remain unpaid more than 30 days after payment was due. If you issue us a purchase order for your subscription to the Services: (a) the purchase order must be for the full amount of the subscription fees shown on your Service Order; and (b) you agree that any purchase order is for your internal convenience only, and any purported contractual terms will have no force or effect with respect to this Agreement.
- 8.4. Taxes. The fees stated in a Service Order do not include local, state, federal, or foreign taxes or other governmental charges resulting from this Agreement or any Service Order. You are responsible for paying all such taxes, excluding taxes on our net income or property.

9. REGULATORY MATTERS

- 9.1. General Compliance with Laws. You and we each agree to comply with all applicable laws, rules, and regulations as they pertain to this Agreement. You further agree to obtain and maintain all approvals, permits, licenses, or certificates required by any regulatory body for your use of the Services.
- 9.2. U.S. Government Customers. Any Subscription Service or modification or derivative thereof and related documentation and technical information which we or you distribute or license to or on behalf of a U.S. Government, are Commercial Items, as that term is defined at 48 C.F.R. §2.101, consisting of Commercial Computer Software and Commercial Computer Software Documentation, as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to the U.S. Government (a) only as Commercial Items, (b) not as military or defense articles as defined in the International Traffic in Arms Regulations, 22 C.F.R Parts 120-130 or Export Administration Regulations, 15 C.F.R. Parts 700-799), and (c) with only those rights as are granted to all other customers of the sales partner program pursuant to this Agreement. Unpublished rights are reserved under the copyright laws of the United States.
- 9.3. Export Compliance. The Services may be subject to export laws and regulations of the United States, Canada, or other jurisdictions. Each party represents that it is not named on any government denied-party list. You further represent that you are not located, and will not access or use, or permit any Authorized User to access or use, any of our technology in any country or region where such access or use would be in violation of any applicable export laws or regulations..
- 9.4. Anti-Corruption. You represent that you have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of our employees or agents in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the above restriction. If you learn of any violation of the above restriction, you must promptly notify our Legal Department at legal@thoughtexchange.com.
- 9.5. General Privacy Laws. You agree to comply with all applicable provincial, state and federal data privacy and security laws and regulations as they may relate to this Agreement, which may include (as applicable) the GDPR, California Consumer Protection Act, and the Personal Information Protection and Electronic Documents Act. In addition, you agree to provide us with such assistance as we may reasonably require to fulfill our responsibilities under such privacy and security laws.
- 9.6. Privacy of Students and Minors. You agree to comply with all applicable provincial, state and federal data privacy and security laws and regulations governing students and other minors, including without limitation (as applicable) the Personal Information Protection and Electronic Documents Act, Federal Educational and Privacy Rights Act at 12 U.S.C. 1232g, Children's Online Privacy Protection Act, New York Education Law Section 2-d and Part 121 of the Regulations of the Commissioner of Education and 15 U.S.C. 6501-6502; Protection of Pupil Rights Amendment (as they may relate to this Agreement. In addition, you agree to provide us with such assistance as we may reasonably require to meet our responsibilities under such privacy and security laws. If you are a U.S. School District or other regulated education institution, by entering into this Agreement, you represent, warrant and agree that:

- a. You have hired us to perform a service for which the district would otherwise use its own employees.
- b. You have previously provided us with an accurate copy of your most recent annual notification of Federal Educational and Privacy Rights Act (FERPA) at 12 U.S.C. 1232g rights.
- c. You are not hiring us to create Exchanges other than for the exclusive purpose of developing, evaluating or providing education products or services for students or schools.
- d. If you ask us to collect information governed by the Children's Online Privacy Protection Act (COPPA), that you are validly exercising consent on behalf of the parents of every student for which information is provided.

10. GENERAL

- 10.1. **Publicity.** We may use your name, trademarks, and service marks to the extent necessary to fulfill our obligations under this Agreement and any Service Order or as otherwise expressly authorized in this Agreement or a Service Order. With your prior written consent we may use your name and trademark as a reference for marketing and promotional purposes on our website and in other communications with our existing and prospective customers. If you subsequently do not want to be listed as reference for the Services, you may send an email to legal@thoughtexchange.com stating that you do not wish to be identified as a reference.
- 10.2. **Insurance.** Each party, at its sole cost and expense, will maintain during the term of this Agreement insurance in the type and amount required by law and consistent with standard industry practices based on its business and the scope of this Agreement. Upon written request of a party, the other party will provide a certificate of insurance evidencing its insurance coverage.
- 10.3. **Relationship of the Parties.** In providing Services to you, our relationship to you is that of an independent contractor. It is not the intent of either party to create a relation of employment, partnership, agency or joint venture. Except as specifically set forth in the applicable Service Order, we will bear all expenses incurred in connection with the Services.
- 10.4. **Notices.** We may give notice to you by email to the individual or individuals listed on your Service Order, or by mail to your address as set out on your Service Order. You may give notice to us under or regarding this Agreement by email to legal@thoughtexchange.com, with a duplicate copy sent via registered mail to: Fulcrum Management Solutions Ltd., Suite E, 1990 Columbia Avenue, PO Box 2260, Rossland BC, Canada V0G 1Y0, Attn: Legal Department.
- 10.5. **Applicable Law.** Unless the applicable Service Order states otherwise: (a) this Agreement shall be governed by, and construed in accordance with the law of the Province of British Columbia, without reference to any conflict-of-laws principles; and (b) the courts of British Columbia will have exclusive jurisdiction over any action or proceeding arising out of, or based upon, this Agreement, and you and we waive any objection on the basis that any such court constitutes an inconvenient forum. Any action or proceeding arising out of, or based upon, this Agreement will be conducted only on an individual basis and not in a class, consolidated or representative action. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING (WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF, OR RELATING TO, THIS AGREEMENT.
- 10.6. **Severability.** In the event that any portion of this Agreement is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law as nearly as possible to reflect the parties' original intentions and the remainder of the provisions shall remain in full force and effect.
- 10.7. **Waiver and Modifications; Assignment.** Either party's failure to insist upon or enforce strict performance of any provision of this Agreement does not mean that either party has waived any provision or right in this Agreement. Neither the course of conduct between you and us nor trade practice shall act to modify any provision of this Agreement. You may not assign or transfer this Agreement without our prior written consent. This Agreement inures to the benefit of and is binding on our respective successors and assigns.
- 10.8. **Amendment.** We may change these Subscription Terms (including any terms or documents incorporated by reference in these Subscription Terms) at any time by publishing the revised terms at <https://thoughtexchange.com/subscription-terms> and updating the "Last Revision" date written above. The

updated Subscription Terms will be effective to any Service Order signed and to any subscription term (including renewal) beginning after the date the updated Subscription Terms are published. Except for changes made by us as described here, no other amendment or modification of the Agreement will be effective unless set forth: (a) in a Service Order issued by us and signed by both you and us; or (b) in an agreement signed or otherwise agreed in writing by both you and us.

- 10.9. Entire Agreement. This Agreement constitutes the entire agreement between us and there are no covenants, representations, warranties or agreements other than those contained or specifically preserved under the terms of this Agreement. The rights and obligations under Sections 3 through 10 shall survive termination of this Agreement.