



Fulcrum Management Solutions Inc.
Thoughtexchange® Terms of Service Agreement

This document and its related documents form an agreement between Fulcrum Management Solutions Inc. and you, Milpitas Unified School District. This document provides the specifics of your agreement; the following documents are incorporated by reference into your agreement: Attachment 1 is a description of the services you have purchased, and Attachment 2 is our terms of service. In the event of a disagreement between this document and the attachments, this document takes precedence.

This Agreement supersedes and replaces any and all previous agreements between the parties, specifically including the agreement between the parties dated January 16, 2017.

This is not an invoice. See below for invoicing details.

Pricing

<i>Thoughtexchange Services</i>	<i>Pricing*</i>
1 Thoughtexchange Team Room with 5 Leaders <i>\$2,000.00 per month, payable annually</i>	\$24,000.00
50% annual discount for legacy partner	(\$12,000.00)
Annual Subscription Price	\$12,000.00

*Pricing in US Dollars

Payment & Term

Your Thoughtexchange Services subscription begins on February 1, 2020 and is automatically renewed for a year term at the Annual Subscription Price, subject to the quoted 2% annual increase, on your Anniversary Date of February 1 for each subsequent year, unless you provide us with 60 days' notice of cancellation prior to the Anniversary Date.

The price shown on this agreement is guaranteed until the February 1, 2022 payment. After this payment, we will provide you with minimum 120 days' notice, prior to the Anniversary Date, of any price increases.

An invoice, showing applicable taxes, will be provided and due upon acceptance of this agreement with subsequent invoices provided on or before the Anniversary Date above.

This agreement must be accepted by January 31, 2020 to be valid.





Acceptance

Please indicate your acceptance of this agreement (including the attachments) by email reply or by signing below and returning this cover page to us. By signing or replying you represent that you are authorized to agree to this agreement on behalf of Milpitas Unified School District. Payment also indicates acceptance of these terms.

Milpitas Unified School District

Fulcrum Management Solutions Inc.

By: _____

By: _____

Juliette Franklin

(Above Name Printed)

Juliette Franklin

(Above Name Printed)

(Title)

VP Finance

(Title)

(Date)

January 21, 2020

(Date)

Thoughtexchange® Services - Attachment 1

Thoughtexchange

Thoughtexchange is a hosted Software-as-a-Service platform. Thoughtexchange allows Exchange Leaders to engage with Participants in structured online interactions. We call each of these interactions an Exchange. Each Exchange is created by an "Exchange Leader" designated by you, our customer. A "Participant" is any other person who participates in the Exchange.

Exchange Leaders and Participants can access Thoughtexchange via most popular web browsers on standard desktop and mobile platforms (see <https://terms.thoughtexchange.com> for a list of supported platforms). A Thoughtexchange iOS app is also available from the Apple App Store.

Team Room Subscription

Thoughtexchange Rooms are virtual environments allowing Exchange Leaders to launch exchanges to engage participants.

You have purchased one or more Team Room Subscriptions. A Team Room allows the number of Exchange Leaders (specified on the cover page) to create unlimited Exchanges, any of which can be active at the same time. Team Rooms are collaborative environments. Exchange Leaders who have access to a given Room are able to access and work with all Exchanges created in the Room.

Online Service Features

Exchange Leaders: Each holder of an Exchange Leader account can create their own Exchanges and have access to special Thoughtexchange features.

Unlimited Participants per Exchange: Exchanges have no limit on the number of participants, although Exchanges including more than a few thousand participants are best served using a Facilitated Exchange and our professional services.

Unlimited Exchanges: An Exchange Leader can create an unlimited number of Exchanges.

Demographic Questions: Up to 10 demographic-style (multiple choice) questions.

Multilingual: The Thoughtexchange user interface runs natively in either English, French or Spanish. Exchanges can be created where Participants can participate in the same Exchange in any language that Google Translate supports.

Analytics and Data Visualization: You have access to analytics and data visualization that is automatically generated by the software.

Hosting: We provide all hosting of all runtime software and data, data backups.

Software Upgrades: We provide periodic software upgrades with new functionality for Participants and Exchange Leaders. We provide release notes to customers and Exchange Leaders informing them of what has changed with each release.

24x7 System Availability: The online services are available 24 hours a day, 7 days a week except in the case of planned system maintenance outages or unplanned outages. In either case, we will make reasonable attempts to minimize the number and duration of these outages.

Thoughtexchange® US Service Terms – Attachment 2

1. Scope of Agreement

1.1 Fulcrum Management Solutions, Inc., a Washington corporation ("Fulcrum" or, alternatively, "we" or "us"), markets and sells subscriptions to the online software platform called Thoughtexchange and various online services offered as part of the platform ("Software Services"). We provide one or more types of subscription each having its own set of Software Services. These Software Services are described more fully in Attachment 1.

1.2 This document is attached to a signed cover page and Attachment 1 that incorporates these terms. The cover page sets forth the price and other details of the subscription that you have purchased, and Attachment 1 identifies the particular Software Services you have purchased. The cover page, together with Attachments 1 and 2, constitutes our Agreement for any Software Services that we provide to you.

2. Precedence of Terms

2.1 While this Agreement sets forth the terms under which we provide Software Services to you our customer, the use of the Thoughtexchange online platform by individuals to whom you provide access to lead or participate in an exchange, is governed by our Participant and Leader Terms of Use (the "Terms of Use").

2.2. The Terms of Use provides protections for Participant privacy, prevents abuse of the platform by Participants and limits our liability and yours to Participants and Leaders. We intend for this Agreement, and not the Terms of Use, to govern the relationship between us. Accordingly, if there is conflict between a term set forth in this Agreement and a term set forth in the Terms of Use:

- a) the term contained in this Agreement takes precedence as between us, and
- b) the term set forth in the Terms of Use takes precedence for Participants.

2.3 Our current form of Terms of Use can be found at <https://terms.thoughtexchange.com>. We may change our Terms of Use from time to time, and we will notify you as early as is commercially reasonable of any upcoming change. No such change will have the effect of changing this Agreement.

3. Exchange Leaders

3.1 Thoughtexchange is a hosted Software-as-a-Service platform. Thoughtexchange allows users to engage with others in structured online interactions. We call each of these interactions an Exchange. Each Exchange is created by an "Exchange Leader." A "Participant" is any other person who participates in the Exchange.

3.2 Access to Exchange Leader features is through one or more accounts authorized by you, our customer, and associated to an email address. At any given time, you may only provide access through the number of email addresses for which you have purchased Exchange Leader accounts. You can add or change the email addresses designated as Exchange Leader accounts. There is no limit on how often you can change these addresses.

3.3 Cancellation, or failure to renew your subscription, will result in suspension of any accounts that you have purchased, either at the time of cancellation or at the end of your current Subscription Period.

4. Term of Software Services

4.1 The services described in this Agreement are only available to you during the Subscription Period provided on the cover page. If your subscription is terminated for any reason, our obligation to provide services terminates on the effective date of termination of your subscription.

4.2 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 cover page, we will bear all expenses incurred in connection with the services.

4.3 You may cancel your subscription at any time during your Subscription Period by providing us with written notice. No refund is payable of any subscription fees already invoiced or paid. We may cancel your subscription at any time and will issue a refund pro-rated based on the number of months remaining to the end of your Subscription Period.

5. Ownership of Content

5.1 You own all visual, written or audible communications and any other material that is produced by you and your Exchange Leaders, stored under your account or published in one or more of your Exchanges. You also own the rights to content created or provided by Participants as part of an Exchange that is licensed to you under the Terms of Use. (All of the foregoing is collectively referred to as "Content.") As part of your subscription, we provide hosting for your Content as well as the tools to create and manage your Content.

5.2 Other material specific to you that we create in providing your services (including, but not limited to, text, graphics, logo, pictures, audio and video) is also owned by you, and you have the right to use it as you see fit following termination of this Agreement.

5.3 All designs, templates, general graphics (i.e. graphics not directly pertaining to your organization) or method of presenting data (e.g. infographics), whether or not created with your input and or assistance, to the extent they do not contain content specific to you, are our property and can be re-used by us for any purpose.

5.4 By way of example, and not limitation, of the foregoing:

- a) You own the specific results and the specific visualizations of the results of your exchanges. We retain ownership of the analytic processes and mechanisms of visualizations even if these were developed or improved in conjunction with you.
- b) Once a customized report or presentation of your exchange results has been completed, it is your property and you may make use of it as you wish. We retain ownership of the design of the report to use as a template for other reports with other customers, even if the design was developed or improved in conjunction with you.

6. Responsibility for Content

6.1 You are solely responsible for any liability arising from your Content. We do not guarantee the accuracy, integrity or quality of any Content.

6.2 While we make a reasonable effort to be compliant with the data access laws in all jurisdictions in which we have a significant number of customers, you are ultimately responsible for following the laws in your state, province or country, including any legal requirements

concerning data access. We do not guarantee the availability of our Software Services in all countries and they may not be available for use in any specific jurisdiction.

6.3 You and your Leaders and Participants also control the privacy of your Content. We have no responsibility for Content disclosed by you, your Leaders or Participants.

6.4 We will use commercially reasonable efforts to ensure that only Participants and Leaders authorized by you have access to your Content and to maintain the privacy of your Content stored on the Thoughtexchange platform.

6.5 Except as permitted by this Agreement or otherwise required by law, we will not share your Content with any third party without your permission. If you grant us permission to use this information publicly you agree this information may be used by us for all business purposes, without any accounting or any payment to you, unless otherwise arranged at the time permission was given. "Permission," as used in this agreement, means written permission including email.

6.6 You acknowledge and agree that we may cooperate with any governmental authority in connection with any investigation into your use of our services, including use in contravention of applicable laws, and may, in accordance with applicable laws, disclose any Content, and any other information pertaining to you or to your use of our services to such governmental authority in connection with any such investigation. Notice of our cooperation with any such investigation will be provided to you where reasonably possible.

7. Use of Content

7.1 You agree that we have the right to use Content for the following purposes:

- a) to monitor and manage usage by Leaders and other terms and conditions of this Agreement;
- b) to extract statistical summary data (numerical values summarizing usage and not including any textual information entered by your Leaders and Participants), combine the data with data from other customers, and to share this data, from which all customer identifying information has been removed, publicly;
- c) to troubleshoot problems or assist your Leaders and Participants; or
- d) to improve our products and services.

7.2 You agree that we have the right to monitor your use of our services to ensure your compliance with this Agreement, or to comply with any law, order, or requirement of any court or government authority.

7.3 If you give us permission to use your Content we may then publish it for our own marketing purposes without further notice to you. You will be able to share the results with Participants or the public as you think best. If you share your Content publicly it is deemed to be in the public domain and we may then share with others as we wish.

8. Content Deletion

8.1 We will maintain the Content from your Exchanges for six (6) months following termination of your subscription. Prior to termination of your subscription, you may obtain copies of your Content using the data download feature. After termination, providing the data has been maintained, we will provide you with a copy of your Content upon written request.

8.2 Termination of your subscription will also result in the termination of hosting of Content outside of the Thoughtexchange platform. We will maintain this hosted Content for six (6) months

following termination of your subscription. Prior to deletion, you may obtain copies of your hosted website or the Content from any such service by making a written request to us.

8.3 After six (6) months we may, at our discretion, permanently delete your Content. We do not guarantee to maintain your Content after cancellation or the end of your term. We may, at our discretion, keep your Content for an indefinite amount of time so that, should you renew, you will have access to your Content. Note that the more time passes the less likely we are to maintain your Content, and even if we do maintain your Content, as time passes it become less likely that your Content will be useable due to system changes, upgrades etc.

8.4 At any time you may request in writing for us to delete your Content. We will delete all copies of your Content in our possession.

9. Confidential Information

9.1 In the course of providing services, you may provide us with certain confidential information, including but not limited to the personal information about your Leaders and Participants and information about your organization not directly related to your Exchange, that is marked confidential or is received under circumstances that would reasonably lead us to understand that it is confidential (your "Confidential Information").

9.2 Similarly, we may provide you with confidential information, including information about the Thoughtexchange platform and related services and information related to our business such as market position, customers, pricing, that is marked confidential or is received under circumstances that would reasonably lead you to understand it to be our confidential information (our "Confidential Information").

9.3 We each agree not to disclose the Confidential Information of the other to any third party without permission. We each agree to protect the Confidential Information with at least the same degree of care that we use to protect your own Confidential Information, but not less than a reasonable degree of care under the circumstances.

9.4 Neither of us shall be liable for the disclosure of the Confidential Information of the other that is:

- a) in the public domain other than by a breach of this Agreement;
- b) rightfully received from a third party without any obligation of confidentiality;
- c) rightfully known without any limitation on use or disclosure prior to its receipt;
- d) independently developed by our respective employees;
- e) generally made available to third parties by the owner without restriction on disclosure; or
- f) otherwise required by law to be disclosed.

9.5 Specifically with respect to email addresses that you provide to us, we agree that we will not use such email addresses for anything other than directly providing services under this Agreement, unless, and only to the extent, you ask us to or grant us permission to do so.

9.6 If you grant us permission to use information publicly, you agree this information may be used by us for all business purposes, without any accounting or any payment to you, unless otherwise arranged at the time permission is given.

9.7 You agree that we may publish or disclose your name (or, if you are a company or agency, the name of your company or agency) as a client on our website or in written or verbal communications to other existing or prospective clients. No other information will be disclosed. If

you do not want your name published or disclosed, you may deliver notice in writing to us and we will agree to keep this information confidential until or unless such request is revoked.

9.8 All terms of this Agreement are confidential between us, and, with the exception of our respective advisors and other agents having an obligation of confidentiality, are not to be discussed with anyone outside of our respective organizations.

10. Student Data Privacy

10.1 We acknowledge that, in order to provide the services described in this Agreement, we may receive data that are covered by the Federal Educational and Privacy Rights Act ("FERPA") at 12 U.S.C. 1232g, Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. 6501-6502; Protection of Pupil Rights Amendment ("PPRA") 20 U.S.C. 1232 h.

10.2 We agree that in providing the services, we will be under your direct control and supervision with respect to the use and maintenance of student records and the personally identifying information contained in those records.

10.3 We further agree that, subject to the truth and accuracy of the following representations and warranties, we are in compliance with the above laws.

10.4 In 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 FERPA 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 COPPA, that you are validly exercising consent on behalf of the parents of every student for which information is provided.

11. Indemnification

11.1 You and we each agree to defend, indemnify and hold the other harmless against and in respect of any loss, damages, obligation, penalty, deficiency or liability (including, without limitation, attorneys' fees) imposed upon, incurred by or asserted against one of us that are finally determined to result from the other's material breach of any provision of this Agreement or its failure to meet its obligations to or perform any acts required 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.

11.2 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 party liable for indemnification shall notify the party entitled to indemnification of the full details to the extent then known. The party entitled to indemnification shall be entitled at its own expense to employ counsel to defend such demand, claim or suit or to participate in the defense of such asserted demand, claim or suit. Any proposed settlement of any such demand, claim or suit must be approved by both of us. We agree to cooperate in good faith in the defense or settlement of any such demand, claim or suit.

12. Warranty and Limitation of Liability

12.1 Because the technologies underlying Software Services such as Thoughtexchange are inherently complex, we cannot warrant that the Software Services will be entirely error-free or will operate without interruption. We warrant that during your Subscription Period the Software Services will be free from significant defects. Our sole responsibilities in the event of an error or defect in the operation of the Software 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.

12.2 All advice provided by us is "as-is" and reflects our best judgment based on the information available to us at the time. You are solely responsible for the consequences of acting on our advice.

12.3 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 RETURN OF 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 FULCRUM'S LIABILITY.

13. General

13.1 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 5 through 12 shall survive termination of this Agreement.

13.2 This Agreement shall be governed by, and construed in accordance with, the laws of the State of Washington, without reference to any conflict-of-laws principles. You irrevocably submit to the personal jurisdiction of the U.S. federal and state courts in King County, Washington for any action or proceeding arising out of, or based upon, this Agreement, and waive any objection to the laying of venue in such courts or that any such court constitutes an inconvenient forum. 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.

13.3 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.

13.4 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.

13.5 Neither the course of conduct between you and us nor trade practice shall act to modify any provision of this Agreement. This Agreement may only be amended by written agreement between all parties. You may not assign or transfer this Agreement without our prior written consent.

Thoughtexchange® US Services Agreement

13.6 This Agreement inures to the benefit of and is binding on our respective successors and assigns.