

Merlyn Mind Classroom Solution: Instructor Terms of Use (“Instructor Terms”)

Last Updated: August 8, 2024

Welcome to the Merlyn Mind Classroom Solution! The Merlyn Mind Classroom Solution is provided by Merlyn Mind, Inc. located at 8 West 40th Street, 20th Floor, New York, NY 10018 (“**Merlyn Mind**”, “**we**”, or “**us**”) to assist educators (“**Instructor**” or “**you**”) in handling a variety of educational tasks. These Terms become effective when you accept them or begin using the Merlyn Mind Classroom Solution, whichever occurs first (“**Effective Date**”).

1. OVERVIEW; WHAT THESE TERMS COVER

1.1 Merlyn Mind Classroom Solution. The “**Merlyn Mind Classroom Solution**” includes Merlyn Mind’s evolving collection of educational products and services, such as Merlyn Origin, Symphony Classroom Hub, instructor and IT administrator portals, out-of-classroom tools, voice-enabled remotes, third-party panel integrations, and other software and services. The Merlyn Mind Classroom Solution includes a variety of individual products and services (“**Merlyn Mind Classroom Offerings**”).

1.2 Relationship to your Institution. Your school or institution (our “**Customer**”) has procured the right to use Merlyn Classroom Offerings through one or more “**Subscriptions**” provided by Merlyn Mind or an authorized reseller. In addition to these Instructor Terms, your rights to use the Merlyn Mind Classroom Offering are also covered by the terms between us and Customer (“**Customer Terms**”).

1.3 Artificial Intelligence and Voice Processing. The Merlyn Mind Classroom Solution includes advanced AI features, such as voice command and generative AI capabilities, to streamline your in-classroom and out-of-classroom tasks, create content, and respond to your questions. Because the Merlyn Mind Classroom Solution can receive and process voice audio commands and other personal data, you must ensure that you use the Merlyn Mind Classroom Solution in accordance with applicable laws and these Instructor Terms and not knowingly or negligently do or fail to do something that would put your school or institution in breach of applicable laws or the Customer Terms, or Merlyn Mind in breach of applicable laws.

1.4 Accepting these Terms. By using the Merlyn Mind Classroom Solution, you agree that you: (a) are of a legal age sufficient to agree to these Instructor Terms; (b) are authorized to enter into this agreement with us; (c) have read, understood, and agree to be bound by these Instructor Terms; and (d) acknowledge the [Merlyn Mind Classroom Solution Privacy Policy](#) (“**Privacy Policy**”), as we may change periodically.

2. LIMITED LICENSE

2.1 License. Subject to these Instructor Terms and the Customer’s Subscription, Merlyn Mind grants you a limited, nonexclusive, nontransferable license to use the Merlyn Mind Classroom Solution for educational purposes directly connected to your role at the relevant Customer school or institution and the Authorized Use (set out at [Section 3.1](#) below). Your usage must also comply with, these Instructor Terms any user manuals and guides relating to the Merlyn Mind Classroom Solutions made available by Merlyn Mind (“**Documentation**”).

2.2 Retained Rights. Other than the limited license granted in [Section 2.1](#), Merlyn Mind retains all intellectual property rights in the Merlyn Mind Classroom Solution.

2.3 Updates. Merlyn Mind may provide updates to the Merlyn Mind Classroom Solution. Customer is responsible for ensuring updates are properly installed. Please consult with your IT Administrator for assistance.

2.4 Feedback. You may provide feedback to us, such as suggestions for product improvements or features, survey responses, and feedback via a user interface. You assign any rights in the feedback to Merlyn Mind, and Merlyn Mind may use your feedback without restriction.

3. AUTHORIZED USE AND RESPONSIBILITY.

3.1 Authorized Use. You may only use the Merlyn Mind Classroom Solution for educational purposes approved by the Customer at the Customer's sites in accordance with Subscriptions, Documentation, applicable law, and these Instructor Terms. You must ensure that the Merlyn Mind Classroom Solution is only used under your supervision by students or other people ("**Participants**") subject to any necessary consents, including but not limited to parental consent if required under applicable laws. You may not use any features after we notify you or Customer that those features are no longer supported.

3.2 Customer's Authority. Your access to the Merlyn Mind Classroom Solution is granted by the Customer for your role as an instructor when Customer agrees to the Customer Terms. If you're no longer authorized by the Customer, you must stop using the Merlyn Mind Classroom Solution.

3.4 Use of AI Features.

- a. General Use. Merlyn Mind offers AI-powered chat and content creation tools, known as "**AI Services**," which produce various forms of content ("**Outputs**") based on your and Participants' prompts and other interactions ("**Inputs**"). You are allowed to use these Outputs for educational purposes as outlined in these Instructor Terms during the term of the applicable Subscription.
- b. Your Responsibilities for Using AI Services. The Merlyn Mind Classroom Solution and its AI Services and features aim to facilitate classroom coordination and enrich educational experiences. Nevertheless, AI is an emerging technology and has limitations and risks. You must not use the AI Services for automated decision-making or profiling, including but not limited to decisions concerning students' education, health, or safety or that would impact individuals' rights or well-being. Although Merlyn Mind and its providers have implemented safety and security controls to minimize risks, AI can output inappropriate, factually inaccurate, or biased content due to limitations in data sources. You must always check Outputs for accuracy and suitability for your use case. You must also ensure that your use of AI Services complies with the Customers' policies and applicable law.
- c. Third-Party AI Providers and AI Use Rules. Merlyn Mind may use third parties to provide certain AI Services (each a "**Third-Party AI Provider**"). You agree to, and will ensure that Participants, comply with the Third-Party AI Provider's terms as they may be updated from time to time ("**Third-Party AI Use Rules**"). Links to current Third-Party AI Use Rules are included in **Exhibit A**, which is part of these Instructor Terms and may be updated from time to time. You are responsible for periodically checking Exhibit A for updates.

4. REGISTRATION AND ENROLLMENT. For registration and setup, your IT administrator ("**IT Administrator**") will be responsible for configuring the Merlyn Mind Classroom Solution. For some Merlyn Mind Classroom Solutions, you will need to sign up at the Merlyn Mind instructor portal before

downloading and installing the desktop application and browser extension on your device with your IT Administrator's approval.

5. MATERIALS AND CONTENT.

5.1 Content Use and Rights.

- a. Use of Content by Merlyn Mind. You grant Merlyn Mind a non-exclusive, unlimited, worldwide, perpetual, royalty-free license to use Content you provide to enable Merlyn Mind to provide the Merlyn Mind Classroom Solution and related services to you and your Participants. "**Content**" means information (including Personal Information), data, materials, and intellectual property you provide to Merlyn Mind in the course of using the Merlyn Mind Classroom Solution, including derivative works of the foregoing. Content also includes all Inputs with respect to the use of the AI Services.
- b. Responsibility for Content. You retain rights in and are responsible for all Content. Merlyn Mind may remove Content that it stores or hosts at its reasonable discretion, including when it deems necessary to comply with legal requirements.
- c. Personal Information Included in Content: Personal Information that may be included in Content is processed in accordance with the [Privacy Policy](#). "**Personal Information**" means information that relates to an identifiable natural person that is protected under applicable laws. As detailed in the Customer Terms, Customer is responsible for providing Participants with any notices or disclosures and collecting any consents necessary to collect Personal Information of Participants. If you learn that Personal Information has been provided to Merlyn Mind without proper consent, you will notify the Customer and Merlyn Mind immediately. Merlyn Mind will then take appropriate steps to delete the Personal Information as required by applicable law.
- d. Representations and Warranties Related to Your Content: You represent and warrant that: (a) you own all intellectual property and other rights or have a lawful right to use Content with the Merlyn Mind Classroom Solution; (b) the Content does not and Merlyn Mind's use of the Content will not infringe any intellectual property or other right of any third party; and (c) the Content will not violate these Instructor Terms (including the Content Rules).

5.2 Content Rules. These rules apply to your and Participants' use of the Merlyn Mind Classroom Solution:

- a. Keep it respectful. Content must not be threatening, defamatory, obscene, pornographic, sexually explicit, or otherwise harmful.
- b. Stay legal. Content must not promote any infringing, illegal, or other inappropriate activity.
- c. Don't Damage the Merlyn Mind Classroom Solution or Anyone's Devices. Content must not introduce viruses, spyware, malware, or otherwise negatively impact the security or operation of the Merlyn Mind Classroom Solution or any computer or other device.
- d. Use of Inputs. You should not use Inputs to generate Outputs that violate these rules.
- e. Merlyn Mind's Right to Protect the Merlyn Mind Classroom Solution. Merlyn Mind may take any legally available action that it determines is appropriate if it reasonably believes that

Content violates these Content Rules, including suspending your access to the Merlyn Mind Classroom Solution.

6. MERLYN MIND CLASSROOM SOLUTION AND MATERIALS USE RESTRICTIONS.

6.1 Your Responsibility. You are responsible for understanding the Merlyn Mind Classroom Solution and ensuring that it is used responsibly within your classroom and by your Participants. This includes securing your login credentials and promptly addressing any unauthorized access.

6.2 Security Measures. You should ensure that hardware devices used with the Merlyn Mind Classroom Solution, such as the remote, are stored securely when not in an authorized use in your classroom. You should only activate microphones during appropriate times to prevent unintended audio capture.

6.3 Usage Restrictions. You will not, and will ensure that Participants do not, use the Merlyn Mind Classroom Solution (i) for commercial purposes that fall outside Customer’s educational activities, or (ii) to engage in harmful, deceptive, unlawful, or offensive activities. You will not, and will ensure that Participants do not (i) violate any third-party rights, including intellectual property rights, (ii) reverse engineer, disassemble, modify, damage, or harm the operation of the Merlyn Mind Classroom Solution, (iii) violate any Third-Party AI Terms, (iv) bypass or disrupt the Merlyn Mind Classroom Solution’s security and content filtering features or gain unauthorized access to the Merlyn Mind Classroom Solution, or (v) use the Merlyn Mind Classroom solution to develop competing products.

6.4 Trials and Betas. Merlyn Mind may provide trial or beta versions of Merlyn Mind Classroom Solutions (“**Trials and Betas**”). Trials and Betas are provided “as is”, without any warranties, indemnities, service level agreements, or support guarantees from Merlyn Mind. Merlyn Mind may discontinue Trials and Betas at any time without providing notice.

7. PRIVACY AND CONFIDENTIALITY.

7.1 You acknowledge that our Customer (your school or institution) is the data controller of Content that is Personal Information submitted to Merlyn Mind for the purpose of providing the Merlyn Mind Classroom Solution, that for this purpose Merlyn Mind processes your Personal Information as a data processor pursuant to the instructions of our Customer, and that our Customer is responsible for providing you with privacy information relating to your use of the Merlyn Mind Classroom Solution.

7.2 Merlyn Mind shall otherwise process your Personal Information in accordance with its [Privacy Policy](#). You acknowledge that you are responsible for understanding the Privacy Policy as it applies to you and your Participants.

7.3 Confidentiality. Neither party shall use any information which is expressly disclosed by the other party as confidential except as explicitly set out in these Instructor Terms or as necessary for the performance or enforcement of these Instructor Terms.

8. TERM AND TERMINATION.

8.1 Term. These Instructor Terms are effective upon the date of your receipt of or access to the Merlyn Mind Classroom Solution as authorized by the Customer and terminate when you no longer have such access or authorization, whichever is latest. The Customer Terms and applicable Subscriptions also govern your rights to access and use the Merlyn Mind Classroom Solution.

8.2 Right to Suspend Operation. Merlyn Mind may immediately suspend or terminate the availability of the Merlyn Mind Classroom Solution or any features in Merlyn Mind's sole discretion without notice.

8.3 Effect of Termination. When these Instructor Terms terminate or expire or the Merlyn Mind Classroom Solution is no longer available, Merlyn Mind will no longer support your use of the solution.

9. THIRD PARTY SOLUTIONS.

9.1 Integration and Choice. Merlyn Mind Classroom Solution may be compatible with or interact with external products, services, or technologies not controlled by Merlyn Mind, such as display panels, search engines, video platforms, and educational collaboration and productivity platforms ("**Third-Party Solutions**"). You and the Customer are responsible for deciding which of these Third-Party Solutions to use. Merlyn Mind may discontinue support for any Third-Party Solution at its convenience.

9.2 Authorized Third-Party Panel Offering. Merlyn Mind Classroom Offerings may also be integrated into display panels offered by a third party as authorized by Merlyn Mind ("**Authorized Third-Party Panel Offering**"). Additional contractual terms for Authorized Third-Party Panel Offerings may be provided by Merlyn Mind, such as in the Subscription, Offering Specific Terms, or third-party application store.

9.3 Independence and No Liability. Merlyn Mind is not responsible for Third-Party Solutions, including their content or how they work with Merlyn Mind's own services. You agree that Merlyn Mind will not be liable for any claims or damages that come from using these Third-Party Solutions through or with the Merlyn Mind Classroom Solution, or the processing of Content by any third-party provider in connection with any Third-Party Solution.

9.4 Compliance with Third Party Terms. When you use Third-Party Solutions, you are responsible for following the third party's rules and terms of use, and you acknowledge that the relevant third-party's privacy policy will apply.

10. GOVERNING LAW AND REMEDIES.

10.1 Where the Customer through which you have access to the Merlyn Mind Classroom Solution is based in England or Wales, these Instructor Terms and any disputes relating to them will be governed by the laws of England and Wales and except as otherwise stated herein, any disputes arising out of or in connection with these Instructor Terms will be resolved in the courts located in High Court of England and Wales.

10.2 Unless otherwise stated or agreed, where the Customer through which you have access to the Merlyn Mind Classroom Solution is based outside of England or Wales, these Instructor Terms and any disputes relating to them will be governed by the laws applicable to our contract with the Customer which will usually be the laws of the jurisdiction in which our Customer is located or incorporated.

11. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.

11.1 Merlyn Mind Classroom Solution Is Provided on an "As is" Basis. To the fullest extent permissible by law, as between Merlyn Mind and you, the Merlyn Mind Parties hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, as to: (i) the Merlyn Mind Classroom Solution, including Documentation, Output, and other materials or content provided by Merlyn Mind or the Merlyn Mind Classroom Solution, and its security, accuracy, availability, or reliability; (ii) any Third Party Solutions or other products, services, or instructions offered or available through the Merlyn Mind Classroom Solution; (iii) whether any defects to or errors on the Merlyn Mind Classroom Solution

will be repaired or corrected; and (iv) whether your use of the Merlyn Mind Classroom Solution is lawful in any particular jurisdiction. “**Merlyn Mind Parties**” means Merlyn Mind, Inc. and its subsidiaries and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns.

11.2 General Disclaimer. EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED IN THESE INSTRUCTOR TERMS, AS BETWEEN MERLYN MIND AND YOU, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION, AND FREEDOM FROM COMPUTER VIRUSES ARE EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW.

11.3 AI Services Disclaimer. You acknowledge and agree that the AI Services are powered by artificial intelligence and that you may have access to certain Outputs that are elicited directly or indirectly by you or Participants. You acknowledge and agree that, notwithstanding anything to the contrary herein, all Outputs are provided “AS IS” and are used at your own risk. Merlyn Mind shall not be liable to you for any Outputs, including, but not limited to, infringement of intellectual property rights, for any errors or omissions in any Outputs, or for any loss or damage of any kind incurred because of your interaction with the AI Services. YOU ACKNOWLEDGE AND AGREE THE AI SERVICES ARE SUPPORT TOOLS AND ANY OUTPUT PRODUCED, GENERATED OR DERIVED THEREFROM DOES NOT CONSTITUTE LEGAL, MEDICAL, FINANCIAL OR PROFESSIONAL ADVICE IN ANY FORM. ADDITIONALLY, OUTPUT MAY CONTAIN ERRORS AND MISSTATEMENTS AND MAY BE INCOMPLETE. YOU ACKNOWLEDGE AND AGREE THAT YOU SHOULD, AND WILL, EVALUATE THE ACCURACY OF ALL OUTPUTS.

12. LIMITATIONS OF MERLYN LIABILITY; YOUR REMEDIES.

12.1 Exclusion of Certain Damages. Under no circumstances will the Merlyn Mind Parties be liable to you for any indirect or consequential losses, including but not limited to any loss that relate to: (i) the Merlyn Mind Classroom Solution, including Documentation, Output, and other materials or content provided by Merlyn Mind or the Merlyn Mind Classroom Solution, or its performance, availability, or operation; (ii) any Content or Third Party Solutions, or their processing, integration or interoperability with the Merlyn Mind Classroom Solution; (iii) any action taken in connection with an investigation by Merlyn Mind Parties or law enforcement authorities regarding your use of the Merlyn Mind Classroom Solution; or (iv) failure by Customer to obtain or maintain necessary consents.

12.2 Applicability of Limitations on Liability. The above limitations of liability will apply to the fullest extent permissible by applicable law, and in particular even if any of these or circumstances were foreseeable and even if Merlyn Mind Parties were advised of or should have known of the possibility of such losses or damages, regardless of whether you bring an action based in contract, negligence, strict liability, or tort (including whether caused, in whole or in part, by negligence, acts of god, telecommunications failure, or destruction of the Merlyn Mind Classroom Solution).

12.3 Exclusive Remedies. YOU AGREE THAT, SUBJECT TO THE FORGOING TERMS, YOUR EXCLUSIVE REMEDY AND ONLY RECOVERY FOR ANY DAMAGE YOU INCUR, SHALL BE LIMITED TO THE DIRECT DAMAGES (IF ANY) YOU ACTUALLY INCUR IN REASONABLE AND EXCLUSIVE RELIANCE ON THE MERLYN MIND CLASSROOM SOLUTION AND MERLYN MIND MATERIALS (EXCLUDING ANY CONTENT PROVIDED BY YOU), AND FOR WHICH WE MAY BE HELD LIABLE BY A COMPETENT COURT.

12.4 Cap on Liability. IN NO EVENT WILL MERLYN MIND'S TOTAL LIABILITY HEREUNDER WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE AND WHETHER IN CONNECTION WITH THESE INSTRUCTOR TERMS OR ANY COLLATERAL CONTRACT, EXCEED THE SUM OF £1,000 (ONE THOUSAND POUNDS), OR £10 (TEN POUNDS) WITH RESPECT TO ANY BETA OR TRIAL USE.

12.5 Death, Personal Injury, Fraud etc. Merlyn Mind does not exclude or limit liability for:

- a. Death or personal injury caused by the negligence of Merlyn Mind, its officers, employees, contractors or agents;
- b. Fraud or fraudulent misrepresentation;
- c. Any other liability which may not be excluded by law.

13. AGREEMENT CHANGES. Merlyn Mind may change these Instructor Terms at any time subject to the terms of the Customer Terms. We will notify you of any changes in a manner as required by law. Additionally, we will endeavor to notify you of any material changes with reasonable advance notice. If you do not agree to such changes, you must stop using the Merlyn Mind Classroom Solution and Merlyn Mind materials. Your continued use of the Merlyn Mind Classroom Solution means you accept the changes.

14. GENERAL PROVISIONS.

14.1 Severability. If any part of these Instructor Terms is invalid, illegal, or unenforceable, the rest of the Instructor Terms will remain in effect.

14.2 Communications. Please note that Merlyn Mind is not obligated to respond to inquiries. You agree that all agreements, notices, disclosures, and other communications that Merlyn Mind provides to you electronically satisfies any legal requirement that such communications be in writing.

14.3 Investigations; Cooperation with Law Enforcement; Termination; Survival. Merlyn Mind reserves the right to: (i) investigate any suspected breaches of its Merlyn Mind Classroom Solution security or its information technology networks, (ii) investigate any suspected breaches of these Instructor Terms, (iii) involve and cooperate with law enforcement authorities in investigating breaches of these Instructor Terms or applicable laws, and (iv) defend and enforce its rights under these Instructor Terms and applicable laws. The provisions of these Instructor Terms, which by their nature should survive suspension or termination of these Instructor Terms will survive, including Sections 7, 9.3, 9.4, 10, 11, 12 and 14.

14.4 Exclusion of Third-Party Rights. Unless expressly provided in this Agreement, no term of the Agreement is enforceable pursuant to the Contracts (Right of Third Parties) Act 1999 or other applicable law by any person who is not party to it.

14.5 Entire Agreement. These Instructor Terms (and the documents referred to in it) contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements and understandings between the parties relating to that subject matter.

14.6 Assignment. Merlyn Mind may assign its rights and obligations under these Instructor Terms, in whole or in part, to any party at any time without any notice. These Instructor Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of Merlyn Mind.

14.7 No Waiver. Except as explicitly described in these Instructor Terms, (i) no failure or delay by a party in exercising any of such party's rights, powers, or remedies under will operate as a waiver of that or any

other right, power, or remedy, and (ii) no waiver or modification of any term of these Instructor Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

14.8 Export Controls. The software from the Merlyn Mind Classroom Solution is subject to EU, UK or U.S. export controls. Customer, Instructors, IT Administrators, and Participants cannot download, export, or re-export it to any country under EU, UK or U.S. embargo or to individuals on U.S. government lists for restricted parties.

14.9 Representations. Each party acknowledges that, in entering into this Agreement, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this license or not) ("**Representation**") other than as expressly set out in the Agreement (and the documents referred to in it). Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract. Nothing in this Section shall limit or exclude any liability for fraud.

14.10 Counterparties. This Agreement may be executed in any number of counterparts and by the parties in separate counterparts. Each counterpart, when executed, shall be an original of this Agreement and all counterparts shall together constitute one instrument.

EXHIBIT A
Third-Party AI Providers and Third-Party AI Use Rules

PrepTime

- May be accessed and used by Instructors via the instructor portal
- Third-Party AI Provider: Google, Inc.
- Third-Party AI Use Rules: <https://policies.google.com/terms/generative-ai/use-policy>