

MERLYN MIND CUSTOMER AGREEMENT

This Merlyn Mind Customer Agreement (“Agreement”) is entered into as of the date of that certain Customer Acceptance of the Merlyn Mind Customer Agreement (“Effective Date”) by and between the educational provider set forth as “Customer” on that certain Customer Acceptance of the Merlyn Mind Customer Agreement (“Institution”) and Merlyn Mind, Inc., located at 8 West 40th Street, 20th Floor, New York, NY 10018-2235 (“Merlyn Mind”).

PLEASE READ THIS AGREEMENT CAREFULLY. IT SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS FOR USE OF THE MERLYN CLASSROOM SOLUTION. CERTAIN USES OF THE MERLYN CLASSROOM SOLUTION INVOLVE THE CAPTURING AND PROCESSING OF VOICE AUDIO AND OTHER PERSONAL INFORMATION AND CONTENT, WHICH PURSUANT TO APPLICABLE LAW MAY REQUIRE THE LEGAL CONSENT OF USERS AND PARTICIPANTS. AS FURTHER STATED BELOW, INSTITUTION IS REQUIRED TO OBTAIN ALL NECESSARY CONSENTS FOR USE OF THE MERLYN CLASSROOM SOLUTION.

Introduction And Overview.

This Agreement governs the deployment and use by Institution of the Merlyn Classroom Solution and its component Merlyn Classroom Offerings that have been procured by Institution pursuant to applicable Subscriptions (defined below). Individual Subscriptions may be for different durations and/or allow for different functionality than other Subscriptions entered into by the Institution for specific Merlyn Classroom Offerings. Additional Subscriptions may be added to this Agreement following the Effective Date and this Agreement shall apply to such additional Subscriptions, unless otherwise agreed in writing between Institution and Merlyn Mind.

NOW, THEREFORE, in consideration of the mutual agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows:

1. Definitions.

“Authorized Third-Party Panel Offering” means a Voice Enabled Offering that is offered and/or sold under authorization from Merlyn Mind and uses a Remote connected to a panel display (part of a Third-Party Solution) to access the Merlyn Solution, including the Merlyn Cloud Services. Authorized Third-Party Panel Offerings include and require use of a Desktop Application and/or Browser Extension.

“Authorized Use” means the conduct of Institution educational classes or related events at the Institution’s site(s) by Instructors and Participants who have provided necessary Consents, using one or more Merlyn Classroom Offerings that have not yet reached End of Support in accordance with (i) the terms and conditions of this Agreement and applicable Subscriptions, (ii) Documentation, (iii) and applicable law.

“Browser Extension” means a Merlyn Mind software application installed on a compatible Internet browser on an Instructor Device, third-party panel that is part of an Authorized Third-Party Panel Offering, or other compatible hardware device that enables the capability to control the browser and provide Internet navigation and Content display (including on Third-Party Solutions) in response to Voice Audio or the Remote.

“Chat Services” means Merlyn Mind’s artificial intelligence powered chat assistant offering as may be further described by Merlyn Mind in associated Documentation.

“Claims and Losses” shall have the meaning set forth in Section 7.

“Consent” means legally informed, recognized, and enforceable consent, approval and/or waiver, as the case may be, in form and substance required by applicable law.

“Content” means any information, data and/or materials and intellectual property therein in any format that Instructors or Participants develop, create, or obtain from third parties, and any derivative works of the foregoing.

“Content Rules” means the rules regarding the transmission, processing, and display of Content by persons using the Merlyn Classroom Solution hereunder, including the terms of this Agreement and the rules set forth in Section 4(D).

“Desktop Application” means the Merlyn Mind software application for installation on an Instructor Device that provides for interoperability of the Instructor Device with the applicable Merlyn Classroom Offering (such as with the Symphony Classroom AI Hub, Merlyn Origin, or Authorized Third-Party Panel Offering).

“Documentation” means Merlyn Mind’s then current user manuals, handbooks, and guides relating to the Merlyn Classroom Solution offered by Merlyn Mind either electronically, on its website, or in hard copy form, all of which Merlyn Mind may update from time to time.

“End of Support” means the offering lifecycle stage of a given Merlyn Classroom Offering when Merlyn Mind will no longer provide any type of support, product replacements, software updates or standard warranty related services for that specific Merlyn Classroom Offering.

“Functionality” means Subscribed Functionality and Post-Subscription Functionality.

“Institution” means the school or educational authority identified above as a party hereto.

“Institution Party” or “Institution Parties” means the Institution, Instructors, IT Administrator, and Participants, and any Institution employee, contractor and/or agent.

“Instructor” means an instructor, teacher, school official, representative, or agent employed by, working at the direction of, or under the control of the Institution or a school or educational authority under the control of the Institution, who is above the age of Consent pursuant to applicable law.

“Instructor Device” means a computer (e.g., laptop), tablet (e.g., Chromebook), smartphone, or other computing device that is compatible with an applicable Merlyn Mind Offering and that is authorized by the Institution and used or managed by an Instructor.

“Instructor Enrollment” (and derivations thereof) means the completion by an Instructor of the process at the Merlyn Instructor Portal (or the IT Administrator Portal if Instructor is also the IT Administrator) for opening and maintaining a Merlyn Mind instructor account, including accepting the Instructor Terms of Use and acknowledging the Merlyn Mind Classroom Solution Privacy Policy. Not all Merlyn Classroom Offerings require or allow Instructor Enrollment; certain Merlyn Classroom Offerings require Instructor Enrollment for some or all Functionality.

“Instructor Terms of Use” means the terms of agreement for use of the Merlyn Classroom Solution or specific Merlyn Classroom Offerings, a copy of the current version of which is attached hereto at **Exhibit C** and incorporated herein (as it may be updated from time to time by posting updates on the Merlyn Mind website, from within the Merlyn Classroom Offering, or through other form of reasonable notice).

“IT Administrator” means the individual(s) authorized by the Institution to use the IT Administration Portal to (i) Register Instructors and (ii) Register and/or Onboard the Merlyn Classroom Offerings as required. Not all Merlyn Classroom Offerings require or allow for Registration by an IT Administrator; certain Merlyn Classroom Offerings require Registration for some or all Functionality.

“IT Administrator Portal” means a Merlyn Mind website that enables the IT Administrator to Register the Symphony Classroom AI Hub, Merlyn Origin, and other Merlyn Classroom Offerings as required, and identify Instructors who will be authorized to Enroll and use Functionality. Not all Merlyn Classroom Offerings use the IT Administrator Portal; certain Merlyn Classroom Offerings require use of the IT Administrator Portal.

“Merlyn Classroom Offering” means a discrete product that is a part of the Merlyn Classroom Solution, which may be bundled or offered separately, as may be modified from time to time. For the avoidance of doubt, the Symphony Classroom AI Hub, Merlyn Origin, and the Merlyn Mind components of the Authorized Third-Party Panel Offering are examples of Merlyn Classroom Offerings. Institution may access the Merlyn Classroom Solution through one or more distinct Merlyn Classroom Offerings depending on which Merlyn Classroom Offerings Institution has procured through one or more Subscriptions.

“Merlyn Classroom Solution” means the family of educational products and services offered by Merlyn Mind, in combination or as separate components, including the Merlyn Cloud Services, Merlyn Origin, Symphony Classroom AI Hub, Remote, Merlyn Instructor Portal, IT Administration Portal, Authorized Third-Party Panel Offerings, other Merlyn Classroom Offerings and associated software and hardware (and Updates made available by Merlyn Mind from time to time). Unless expressly stated otherwise, references in this Agreement to the Merlyn Classroom Solution include and apply to each individual Merlyn Classroom Offering as well as any bundle or configuration of

such Merlyn Classroom Offerings.

"Merlyn Cloud Services" means the cloud-based API/services that enable various Merlyn Classroom Offerings such as by generating transcriptions from Voice Audio, controlling of classroom devices, and responding to commands.

"Merlyn Instructor Portal" means that website maintained by Merlyn Mind for Instructor Enrollment, downloading the Desktop Application and Browser Extension, and/or configuring/personalizing the Instructor's use of the Merlyn Mind Offering. Not all Merlyn Classroom Offerings use the Merlyn Instructor Portal; certain Merlyn Classroom Offerings require use of the Merlyn Instructor Portal. Use of the Merlyn Instructor Portal requires agreement to the Instructor Terms of Use by each Instructor.

"Merlyn Mind Classroom Solution Privacy Policy" means the privacy policy available at [<https://cdn.merlyn.org/terms/origin-privacy-policy.pdf>] which may be updated from time to time.

"Merlyn Mind Materials" means (i) materials and other items subject to copyright and other copyrightable material relating to the Merlyn Classroom Solution, including Documentation, and similar items from Merlyn Mind's licensors and other third parties; (ii) Trademarks of various parties, including those of Merlyn Mind; and (iii) any other forms of intellectual property of Merlyn Mind.

"Merlyn Origin" means the Voice Enabled Offering that includes a Remote, Desktop Application, and Browser Extension that connects to an Instructor Device and accesses the Merlyn Cloud Services.

"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, successors, and assigns.

"Minor Participant" means any Participant under the age of 13 in the United States or otherwise under the age of consent under applicable law.

"Offering Specific Terms" means any additional Merlyn Mind terms and conditions applicable to specific Merlyn Classroom Offerings, which are set forth in the Customer Acceptance of Merlyn Mind Customer Agreement and/or set forth in a Subscription. Certain Merlyn Classroom Offerings may be subject to additional Offering Specific Terms available at the URL provided in this Agreement and/or a Subscription. Such Offering Specific Terms are incorporated by reference and shall apply to the Institution's use of the applicable Offering.

"Onboarding" (and derivations thereof) means the provisioning of Registered Symphony Classroom AI Hubs, Merlyn Origin, or other Merlyn Classroom Offerings (as applicable) for Authorized Use. Depending on the specific Merlyn Classroom Offering, Onboarding may involve entering the settings for each Symphony Classroom AI Hub, Merlyn Origin or other Merlyn Classroom Offerings (as applicable), connecting Remotes with the Symphony Classroom AI Hub, Merlyn Origin or other Merlyn Classroom Offerings as applicable, and connecting Symphony Classroom AI Hub, Merlyn Origin or other Merlyn Classroom Offerings (as applicable) to the Internet and the Merlyn Cloud Services in a classroom or facility on a campus controlled by the Institution.

"Participant" means any person, including students, whose presence or information, including Personal Information is captured or processed in connection with the use of the Merlyn Classroom Solution. "Participant" does not include an Instructor or IT Administrator.

"Personal Information" means information that identifies, could reasonably identify, or otherwise relates to a natural person that is protected under applicable laws, including Voice Audio.

"Post-Subscription Functionality" means the limited capabilities or functions, if any, of a Merlyn Classroom Offering during the Term and prior to End of Support if a respective Subscription for such Merlyn Classroom Offering was initially purchased and has expired. Post-Subscription Functionality, if any, is not guaranteed and shall be determined by Merlyn Mind in its sole discretion from time to time.

"Registration" (and derivations thereof) means the completion of the registration process for each Institution Symphony Classroom AI Hub, Merlyn Origin, or other Merlyn Classroom Offering as applicable and/or Instructor, as the case may be, at the IT Administrator Portal using current, complete and accurate information to the extent requested by Merlyn Mind. Not all Merlyn Classroom Offerings require or allow for Registration. Certain Merlyn Classroom Offerings require Registration for some or all Functionality.

"Remote" means a Merlyn Mind handheld remote-control unit that (i) contains push to talk voice technology, with microphone, for use with Voice Enabled Offerings and (ii) allows Instructors (and others provided access to the Remote) to control compatible Merlyn Classroom Offerings and Instructor Devices with Voice Audio, buttons or pointing.

“Subscribed Functionality” means capabilities available pursuant to a Subscription.

“Subscription” means the commercial terms, including payment, entitlement or license duration (e.g., 3 years), quantity, or other user limits, and other terms governing Institution’s purchase or procurement of Functionality of specific Merlyn Classroom Offerings, which may be in the form of a purchase agreement/order, license agreement, ordering document, or another form expressly approved and accepted by Merlyn Mind or a Merlyn Mind authorized reseller. Different Subscriptions can apply to different Merlyn Classroom Offerings (e.g., Merlyn Origin and the Symphony Classroom AI Hub could be addressed under the same or different Subscriptions) or different instances of the same Merlyn Classroom Offering (e.g., individual Symphony Classroom AI Hubs acquired at different times or with different Functionality could have different license durations or expirations).

“Symphony Classroom AI Hub” means the Voice Enabled Offering that includes a speaker hub with microphones, Remote, Desktop Application, and Browser Extension. The Symphony Classroom AI Hub connects to an Instructor Device and compatible classroom equipment and resources (such as monitors, laptops, and projectors) and accesses the Internet and Merlyn Cloud Services.

“Term” means the term of this Agreement, as set forth in Section 10.

“Third-Party Solutions” means websites, software, applications, hardware devices and other technologies, services, and mounts or physical structures, that are not produced, sold, owned, controlled, or operated by Merlyn Mind but that may be compatible with certain Merlyn Classroom Offerings. Third-Party Solutions are not part of the Merlyn Offerings.

“Trademarks” means trademarks, logos, trade names, trade dress, service marks, and trade identities.

“Trials and Betas” mean access to any Merlyn Classroom Offering (or certain features thereof) on a free, trial, beta or early access basis. “Updates” means modifications (including to add or remove functionality), improvements, and enhancements to the Merlyn Classroom Solution made available by Merlyn Mind from time to time.

“Unsupported Functionality” means use of a Merlyn Classroom Offering (i) that has reached End of Support or (ii) after the Term, whichever occurs first.

“Voice Audio” means spoken or audible speech, utterances, phrases, and sounds from or by a natural person within range of the Merlyn Classroom Solution.

“Voice Enabled Offering” means a Merlyn Classroom Offering that can receive or capture Voice Audio.

2. Merlyn Classroom Solution, Updates, Ownership, Feedback.

A. Merlyn Classroom Solution and Merlyn Mind Materials. Subject to Institution’s compliance with the terms of this Agreement, during the Term Merlyn Mind hereby grants the Institution a limited, nonexclusive, nontransferable license to use Functionality of the Merlyn Classroom Solution and Merlyn Mind Materials solely for Authorized Use with respect only to those Merlyn Classroom Offerings that have been procured by the Institution pursuant to Subscriptions.

B. Modifications and Enhancements. Merlyn Mind may provide the Institution with Updates at its discretion. For Updates that are not provided “over the air” for automatic installation, Institution agrees that it is responsible for ensuring that all Updates are downloaded and installed (including on each Merlyn Classroom Offering and/or Instructor Device, as applicable) in a timely manner. All Updates are deemed to be part of the Merlyn Classroom Solution and subject to this Agreement. Without limiting the foregoing, Merlyn Mind retains all rights to control, modify, limit, or discontinue any aspect of the Merlyn Classroom Offering at its discretion.

C. Ownership. The Merlyn Classroom Solution (including all Merlyn Classroom Offerings) and the Merlyn Mind Materials are owned or controlled by Merlyn Mind and its licensors and certain other third parties. All rights, title, and interest in and to the Merlyn Classroom Solution (including all Merlyn Classroom Offerings) and Merlyn Mind Materials are the property of Merlyn Mind or its licensors or certain other third parties, and are protected by U.S. and international copyright, trademark, trade dress, trade secret, patent and/or other intellectual property and unfair competition rights and laws to the fullest extent possible.

D. Reservation of Rights. This Agreement includes only narrow, limited grants of rights to Merlyn Mind Materials

and for use and access of the Merlyn Classroom Solution pursuant to one or more Subscriptions. No other right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise under common law or in equity. All rights not expressly granted to Institution are reserved by Merlyn Mind and its licensors and other third parties.

E. Feedback. Institution hereby assigns to Merlyn Mind all rights, title, and interest (including any intellectual property rights) in any feedback provided by an Institution Party to Merlyn Mind regarding Merlyn Mind's Merlyn Classroom Solution, products and/or services (including any surveys, reports, suggestions, improvements, enhancements, and/or feature requests).

F. Shipment From Merlyn Mind. If Merlyn Mind ships hardware components of a Merlyn Classroom Offering to Institution directly, risk of loss shall pass to Institution upon delivery of the hardware components to Institution's designated location, unless different shipment terms are agreed to between a Merlyn Mind authorized reseller and institution.

3. Merlyn Classroom Solution: Authorized Use, Responsibility, Risks Of Use, and Restrictions.

A. Authorized Use. During the Term, the applicable Merlyn Classroom Offerings may be used solely for Authorized Use and for no other purpose. Any use or attempted use of Unsupported Functionality is not an Authorized Use and is subject to Section 10(E)(6). Authorized Use only includes Subscribed Functionality for specific Merlyn Classroom Offerings pursuant to valid Subscriptions and in accordance with the terms of those Subscriptions, and Post-Subscription Functionality for those Merlyn Classroom Offerings as applicable. Merlyn Mind has no control over and takes no responsibility or liability whatsoever for any use that is not Authorized Use.

B. Institution Responsibility for Use and Obtaining Consents.

(1) **Institution Responsibility for Use.** The Institution is responsible for ensuring that all use of the Merlyn Classroom Solution is an Authorized Use, including that such use is only in facilities controlled by the Institution.

Whether or not a Merlyn Classroom Offering requires or allows Instructor Enrollment, Institution shall always remain responsible for all use of the Merlyn Classroom Solution (whether by Instructors, IT Administrators, or Participants) and ensuring that all use is an Authorized Use, including that such use complies with the Instructor Terms of Use. Institution acknowledges and agrees that it has control of and full responsibility for use of the Merlyn Classroom Solution by its Instructors, IT Administrators, Participants, and any other Institution Party and their compliance with this Agreement. For clarity, in the event the Institution is a school board or other entity contracting on behalf of multiple schools or education authorities under its control, the Institution shall procure and ensure, and remain fully responsible for, the full compliance with this Agreement by such schools and educational authorities and all other Institution Parties.

(2) **Notification.** Institution agrees to promptly notify Merlyn Mind of any unauthorized use of the Merlyn Classroom Solution and/or any material error or difficulty encountered in accessing or using the Merlyn Classroom Solution.

(3) **Institution Responsibility for Required Consents.** As between Institution and Merlyn Mind, Institution will be solely responsible for ensuring that the receipt or capture of Personal Information, including Voice Audio, for processing by a Merlyn Classroom Offering and use with the Merlyn Classroom Solution is in compliance with applicable law, including but not limited to obtaining and maintaining all applicable Consents for Voice Audio from Instructors, Participants, parents or legal guardians of Participants or any other persons, as required by applicable law.

C. Merlyn Classroom Solution Use Risks.

(1) **Risks from Voice Enabled Offerings and Content.** The Institution acknowledges and agrees that: (i) the Voice Enabled Offerings include microphones and Voice Audio processing technologies, and connects to the Internet; (ii) if activated and situated in certain deployments Voice Enabled Offerings are capable of receiving and processing sounds within range (e.g., within the room where the Symphony Classroom AI Hub or Remote is located), which may include Voice Audio that is not intended or authorized to be captured by, interact with or engage the Merlyn Classroom Solution; (iii) unless the Voice Enabled Offering is turned off, or has its microphones muted or disabled, Subscribed Functionality allows the Voice Enabled Offering to receive Voice Audio; and (iv) Institution Parties and others with access to the Merlyn Classroom Solution

may choose to use Merlyn Classroom Offerings to access and display Content that is illegal or inappropriate via the Internet or a Merlyn Classroom Offering. The Institution is responsible for ensuring that Merlyn Classroom Offerings are not used, operated, or deployed in a manner that violates applicable law or this Agreement.

(2) **Physical Security and Muting of Merlyn Classroom Offerings.** Institution shall ensure that (i) Symphony Classroom AI Hubs, Remotes, and other Merlyn Classroom Offerings are physically secure in a classroom or facility on a campus controlled by the Institution and kept with microphones muted or disabled when not in active Authorized Use by an Instructor, (ii) Remotes are secured when not in Authorized Use by an Instructor, and (iii) Merlyn Classroom Offerings are properly and securely mounted and/or configured in a safe manner in accordance with any installation and use specifications. Institution shall promptly notify Merlyn Mind of any unauthorized access, use or disclosure of the Merlyn Classroom Solution of which it becomes aware and will provide reasonable assistance to Merlyn Mind regarding any security incident related to the Merlyn Classroom Solution.

(3) **Passwords and Access Credentials.** Institution is responsible for the security and confidentiality of passwords and access credentials associated with the Merlyn Classroom Solution. Institution will not sell or transfer any of the foregoing to any other person or entity, and Institution shall ensure compliance by Institution Parties under its control. Institution will promptly notify Merlyn Mind about any known or suspected unauthorized access to the Institution or Institution Party's passwords or access credentials.

D. Restrictions.

(1) **Merlyn Classroom Solution Restrictions.** Institution agrees that the Institution Parties will not: (i) use the Merlyn Classroom Solution for any commercial purpose not related to the normal educational purposes of the Institution; (ii) engage in any activities through or in connection with the Merlyn Classroom Solution that seek to, attempt to, or do harm to any individuals or entities, or deceive or exercise undue influence on individuals for unlawful purposes, or are unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third party, or are otherwise objectionable to Merlyn Mind; (iii) reverse engineer, decompile, disassemble, reverse assemble, or modify any Merlyn Classroom Solution source or object code or any software or other products, services, or processes accessible through any portion of the Merlyn Classroom Solution; (iv) engage in any activity that interferes with the proper operation of the Merlyn Classroom Solution, or otherwise causes harm to the Merlyn Classroom Solution, Merlyn Mind Parties, or other users of the Merlyn Classroom Solution; (v) interfere with or circumvent any security feature of the Merlyn Classroom Solution or any feature that restricts or enforces limitations on use of or access to the Merlyn Classroom Solution, the Merlyn Mind Materials, or the Content; (vi) attempt to gain unauthorized access to the Merlyn Classroom Solution, other computer systems or networks connected to the Merlyn Classroom Solution, through password mining or any other means; or (vii) otherwise violate this Agreement.

(2) **Merlyn Mind Materials Use Restrictions.** Institution agrees that, in using the Merlyn Classroom Solution, Institution Parties will not: (i) monitor, gather, copy, or distribute the Merlyn Mind Materials by using any robot, rover, "bot", spider, scraper, crawler, spyware, engine, device, software, extraction tool, or any other automatic device, utility, or manual process of any kind; (ii) frame or utilize framing techniques to enclose any such Merlyn Mind Materials (including any images, text, or page layout); (iii) remove or cover any Trademark, copyright, and other intellectual property notices contained in such Merlyn Mind Materials; (iv) use such Merlyn Mind Materials in a manner that suggests an unauthorized association with any of our, or our licensors', products, services, or brands; (v) make any modifications to Merlyn Mind Materials; (vi) use or exploit Merlyn Mind Materials in any way for any purpose other than educational purposes or as specifically permitted by this Agreement as part of an Authorized Use; (vii) insert any code or product to manipulate Merlyn Mind Materials in any way; (viii) access or use the Merlyn Classroom Solution in order to build or support, or assist a third party in building or supporting, products or services competitive to Merlyn Mind's products or services; and (ix) perform or disclose any benchmark or performance tests of the Merlyn Classroom Solution, without Merlyn Mind's prior written consent.

4. Additional Institution Obligations.

A. Registration, Onboarding, and Instructor Enrollment; Passwords. Certain Merlyn Classroom Offerings may require Registration, Instructor Enrollment, and/or Onboarding as a condition of use. The Institution is responsible for ensuring that any required Registration, Instructor Enrollment, and/or Onboarding are completed prior to any use of such Merlyn Classroom Offerings. Without limiting the generality of the foregoing, with respect to the Symphony Classroom AI

Hub and Merlyn Origin Institution shall ensure that each Instructor individually completes the Instructor Enrollment process at the Merlyn Instructor Portal prior to any use. As applicable, Enrolled Instructors or the IT Administrator will download and install necessary software to Instructor Devices to enable pairing and interoperability with Remotes.

B. Internet Connection Required. Use of the Merlyn Classroom Solution, including the Merlyn Cloud Services, requires Internet access and may require Third-Party Solutions to enable such access. Institution agrees that it is solely responsible for these requirements, including any applicable changes, updates, and fees as well as the terms of agreement with mobile device and telecommunication providers.

C. Offering Specific Terms. Certain Merlyn Classroom Offerings may (i) be subject to Offering Specific Terms with respect to Institution's use of such Merlyn Classroom Offerings and/or (ii) require Institution and/or individual users to agree to additional Offering Specific Terms, including Terms of Use. Offering Specific Terms may be included during the Registration, Instructor Enrollment, and/or Onboarding processes, included in product packaging, or made available prior to download or access of Merlyn Classroom Offerings that are software or services. Applicable Offering Specific Terms are incorporated herein and applicable to the Institution. Merlyn Mind may update Offering Specific Terms from time to time and such changes shall apply to continued use of the covered Merlyn Classroom Offering to the extent permitted by law.

D. Content.

(1) **General.** Institution agrees that it permits the Merlyn Classroom Solution to access, process, transmit and display Content (including as applicable through Third-Party Solutions that connect to or operate with Merlyn Classroom Offerings). To the extent of Institution's rights, Institution grants Merlyn Mind a non-exclusive, perpetual, unlimited, worldwide, cost-free license to use, modify, and adapt Content, and created derivative works of the foregoing, to provide the Merlyn Classroom Solution to the Institution Parties, including Instructors and Participants.

(2) **Responsibility for Content.** The Institution and/or Institution Parties retain whatever right, title, and interest that they respectively have in the Content and remain ultimately responsible for it. Merlyn Mind makes no assurance regarding the integrity or retention of the Content. Merlyn Mind reserves the right at its sole discretion and without liability to the Institution Parties to delete, at any time and for any reason, any such Content, subject to applicable law.

(3) **Personal Information Contained in Content.** Personal Information that may be included in Content is processed in accordance with the Merlyn Mind Classroom Solution Privacy Policy.

(4) **Representations and Warranties Related to Content.** Institution represents and warrants that Institution has obtained all necessary and legally required Consents from any individual who is depicted in or contributed to any Content or whose Personal Information is captured or processed by the Merlyn Classroom Solution, and that, as to such Content, including as required under Section 5, (a) an Institution Party is the sole author and owner of the intellectual property and other rights to the Content, or has a lawful right to submit the Content and grant Merlyn Mind the rights to it as described above, without creating any obligation of or liability for Merlyn Mind; (b) the Content does not and, as to Merlyn Mind's permitted uses set forth in this Agreement, will not infringe any intellectual property or other right of any third party; and (c) the Content will not violate this Agreement (including the Content Rules below), or cause injury or harm to any person.

(5) **Content Rules.** Use of the Merlyn Classroom Solution is subject to the Content rules set forth in the Instructor Terms of Use. Merlyn Mind may take any legally available action that it deems appropriate, in its sole discretion, with respect to Content that Merlyn Mind reasonably believes violates any Instructor Terms of Use. However, with respect to Content, Merlyn Mind is not obligated to take any action not required by applicable law. **Exhibit A** sets forth Merlyn Mind's policy for copyright infringement notification.

E. Third-Party Solutions.

(1) Third-Party Solutions.

- i. The Merlyn Classroom Solution links to or integrates with certain Third-Party Solutions as part of Functionality. Institution is solely responsible for determining the Third-Party Solutions its Instructors

will use with the Merlyn Classroom Solution. Subject to Section 4(E)(2) below, Merlyn Mind may discontinue support of interoperability with any Third-Party Solution at its convenience.

- ii. Merlyn Mind has no control over and does not endorse or sponsor Third-Party Solutions, and Merlyn Mind does not assume any obligation to review any Third-Party Solutions or any Content created by or provided through such Third-Party Solutions. Subject to Section 4(E)(2) below, Merlyn Mind does not guarantee the interoperability of Third-Party Solutions with the Merlyn Classroom Solution elements provided by and proprietary to Merlyn Mind. To the maximum extent permitted by law, Merlyn Mind will under no circumstances be liable for any direct, indirect, incidental, or special loss or other damage, whether arising from negligence, breach of contract, defamation, infringement of copyright or other intellectual property rights, caused by the exhibition, distribution or exploitation of any information or content contained within any Third-Party Solutions and not provided by Merlyn Mind.
- iii. Any activities of Institution Parties in connection with any Third-Party Solutions are subject to the privacy and other policies, terms, and conditions of use and/or sale, and rules issued by the operator of the relevant Third-Party Solutions.

(2) **Authorized Third-Party Panel Offerings.** Authorized Third-Party Panel Offerings may be subject to additional contract terms set forth in a Subscription and/or Offering Specific Terms. Merlyn Mind's responsibility or obligation, if any, with respect to the inter-operability between those Merlyn Classroom Offerings and Third-Party Solutions that comprise an Authorized Third-Party Panel Offering shall be set forth in such Subscriptions or Offering Specific Terms. Merlyn Mind is not responsible for any Third-Party Solution that is part of an Authorized Third-Party Panel Offering.

F. Trials and Betas. Merlyn Mind may offer optional Trials and Betas. Use of Trials and Betas is permitted only for Institution's internal evaluation during the period designated by Merlyn Mind on the Order (or if not designated, 30 days). Either party may terminate Institution's use of Trials and Betas at any time for any reason. Trials and Betas may be inoperable, incomplete or include features never released. Notwithstanding anything else in this Agreement, Merlyn Mind offers no warranty, indemnity, SLA or Support for Trials and Betas and its cumulative aggregate liability for Trials and Betas will not exceed One Thousand U.S. Dollars (US\$1,000).

5. Privacy.

A. Institution. The Institution will at all times comply with all applicable international, federal, state, and local laws, rules, and regulations, currently in effect and as they become effective, including any that relate to the privacy, confidentiality, and/or security of protected personal information in connection with its use of the Merlyn Classroom Solution and all related Content provided to Merlyn Mind in connection with the Merlyn Classroom Solution. Institution is solely responsible for providing all disclosures and obtaining all necessary and required Consents to: (i) deploy and use the Merlyn Classroom Solution in its classrooms and facilities on a campus controlled by the Institution; (ii) share, enable the provision of, or otherwise make available Instructor and Participant information, including Personal Information, and Content to Merlyn Mind in connection with Merlyn Classroom Solution and pursuant to the Agreement and (iii) permit Merlyn Mind to use Institution information and Instructor and Participant information, including Personal Information, and Content as described in this Agreement.

B. Merlyn Mind. Merlyn Mind processes Personal Information in accordance with the Merlyn Mind Classroom Solution Privacy Policy.. In the event that Institution is subject to the Family Educational Rights and Privacy Act ("FERPA"), Institution determines that Merlyn Mind has a "legitimate educational interest" in carrying out its duties in performance of this Agreement and agrees to designate Merlyn Mind as a "school official" as the term is used in FERPA 34 CFR Section 99.31. Merlyn Mind shall remain under the direct control of the Institution with respect to the use and maintenance of student "personally identifiable information" from "education records," (each as defined in FERPA) and shall use and share student personally identifiable information, including Voice Audio, only for the limited purpose of providing the Merlyn Classroom Solution and the services.

C. Consents.

(1) Consent to Vocal Recordings. Institution acknowledges the use of certain Merlyn Mind Classroom Solutions will involve the recording of Voice Audio. Institution represents and warrants that it will provide all disclosures and collect all Consents as required under applicable law for the collection of any Vocal Recordings by or on behalf of the Institution.

(3) Consent of Minor Participants. Personal Information of Minor Participants may be subject to particular Data Protection Laws covering children's data including the Children's Online Privacy Protection Act ("COPPA"), which applies to the collection of Personal Information of individuals under the age of 13. Institution acknowledge and agrees (i) that Merlyn Mind will only process Personal Information of Minor Participants subject to COPPA for the benefit of the Institution and for no other commercial purpose, (ii) that Merlyn Mind does not process Personal Information of Minor Participants for the purpose of identifying the identify of such Minor Participant and (ii) if Institution, in its sole discretion, chooses to utilize Merlyn Mind Classroom Solution in environments with Minor Participants, Institution must obtain and collect all Consents, including verifiable parental Consent under COPPA, as applicable, prior to Personal Information of such Participants being provided to Merlyn Mind. If Merlyn Mind becomes aware that the Personal Information of a Minor Participant has been collected without appropriate consent, Merlyn Mind shall delete it and comply with any other obligations with respect to such Personal Information under applicable law. Institution acknowledges and agrees to the Merlyn Mind COPPA Notice to Institutions ("COPPA Notice") attached hereto as **Exhibit B**. Attached as Annex 1 to the COPPA Notices is a sample verifiable parental Consent for purposes of COPPA, Institution acknowledges that Annex 1 to the COPPA Notice is being provided merely as an example and not as legal advice. Merlyn Mind disclaims all liability as to legality of **Exhibit B** as may be utilized by Institution.

6. Institution Representations And Warranties.

A. Institution Represents And Warrants To Merlyn Mind That At All Times During The Term:

1. Institution has all legal authority and rights, and has obtained and/or caused those schools or educational authority under the control of the Institution using the Merlyn Classroom Solution pursuant to this Agreement to obtain all necessary Consents, to: (x) deploy and use the Merlyn Classroom Solution in its classrooms and facilities on a campus controlled by the Institution; (y) share, enable the provision of, or otherwise make available Instructor and Participant information, including Personal Information, and Content to Merlyn Mind in connection with Merlyn Classroom Solution and pursuant to the Agreement and (z) permit Merlyn Mind to use Institution information and Instructor and Participant information, including Personal Information, and Content as described in this Agreement.
2. The provision of any Instructor or Participant information, including Personal Information, and Content to Merlyn Mind will not violate or infringe applicable laws or the rights of any third party.
3. To the extent required by applicable law, Institution has a duly executed data sharing agreement, data protection agreement, or such other equivalent agreement as required by applicable law, that is binding and in force and allows Authorized Use of the Merlyn Classroom Solution as contemplated by this Agreement.

B. The signatory executing this Agreement on behalf of the Institution represents that (i) he/she has read, understood, (ii) he/she agrees to be bound and to bind the Institution by this Agreement, and (iii) he/she has the authority to bind the Institution to this Agreement.

7. Indemnity.

A. To the fullest extent permissible by law, Institution hereby agrees to defend, indemnify, and hold Merlyn Mind Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, and expenses (including attorneys' fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against any Merlyn Mind Party, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with: (i) Content; (ii) use of the Merlyn Classroom Solution and activities in connection with the Merlyn Classroom Solution by any Institution Party whether or not such use is

an Authorized Use (except to the extent caused by the material uncured breach of this Agreement by Merlyn Mind); (iii) any Institution Party's violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with use of the Merlyn Classroom Solution or activities in connection with the Merlyn Classroom Solution; (iv) information or material transmitted through Instructor Devices, even if not submitted by an Institution Party, that infringes, violates, or misappropriates any copyright, Trademark, trade secret, trade dress, patent, publicity, privacy, or other right of any person or entity; (v) any Institution Party's use of Third-Party Solutions and activities in connection with Third-Party Solutions; (vi) harm, death or property damage arising from or in connection with negligence or willful misconduct of Institution and/or any Institution Party, and (vii) any breach by Institution of any term, representation or warranty of this Agreement, including failure by the Institution to obtain and maintain required Consents (all of the foregoing, "**Claims and Losses**").

B. Merlyn Mind shall have the right to participate using a counsel of its choice and its cost in the defense of any Claim and Losses. Institution will not settle any Claims and Losses without, in each instance, the prior written consent of an officer of a Merlyn Mind Party.

8. Disclaimer Of Representations And Warranties.

A. The Documentation accompanying Symphony Classroom AI Hubs, Remotes, other hardware components of the Merlyn Classroom Offerings may contain certain express warranty provisions regarding such hardware, which set forth the warranty obligations of Merlyn Mind with respect thereto. Merlyn Mind does not offer any uptime or service level commitments, credits, or refunds unless set forth in Offering Specific Terms with respect to specific Merlyn Classroom Offerings.

B. EXCEPT FOR ANY EXPRESS HARDWARE WARRANTIES REGARDING MERLYN CLASSROOM OFFERINGS THAT MAY BE PROVIDED SEPARATELY WITH SUCH HARDWARE, THE MERLYN CLASSROOM SOLUTION IS PROVIDED ON AN "AS IS", "AS AVAILABLE", AND "WITH ALL FAULTS" BASIS. Therefore, to the fullest extent permissible by law, the Merlyn Mind Parties hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, as to: (a) the Merlyn Classroom Solution (including the Merlyn Mind Materials and the Content), including whether the information (including any instructions) on the Merlyn Classroom Solution is accurate, complete, correct, adequate, useful, timely, or reliable or meet Institutions requirements or expectations, including whether the artificial intelligence (AI) functionality will operate error-free or produce useful, truthful, or accurate content or results; (b) any Third-Party Solutions or other products, services, or instructions offered or referenced at or linked through the Merlyn Classroom Solution, whether as standalone products or as included in Authorized Third-Party Panel Offerings; (c) the security associated with the transmission of Content transmitted to Merlyn Mind or via the Merlyn Classroom Solution; (d) whether the Merlyn Classroom Solution or the servers that make the Merlyn Classroom Solution available are free from any harmful components; (e) whether any defects to or errors on the Merlyn Classroom Solution will be repaired or corrected; (f) whether access by any Institution Party to the Merlyn Classroom Solution, including the Merlyn Cloud Services, will be uninterrupted; (g) whether the Merlyn Classroom Solution will be available at any particular time or location; and (h) whether use by any Institution Party of the Merlyn Classroom Solution is lawful in any particular jurisdiction.

C. If Institution receives Chat Services, this Section 8(C) applies to Institution, Instructor and Participant's use and interaction with the Chat Services. Institution acknowledges and agrees that the Chat Services are powered by artificial intelligence and that, in connection with access to and use of the Chat Services, Institution, Instructor and Participant may have access to certain responses, outputs and text that are elicited directly or indirectly by Institution, Instructor or Participant (collectively, "Outputs"). Subject to Institution's compliance with the terms and conditions of this Agreement, Merlyn Mind grants Institution a right during the applicable Term to use the Outputs for the educational purposes of Institution, only as provided herein and only in accordance with Merlyn Mind's Documentation. Institution acknowledges and agrees that, notwithstanding anything to the contrary herein, all Outputs are provided "AS IS" and should be used at Institution's own risk. Before using or interacting with the Chat Services, Institution is responsible for making Institution's own determination that the Chat Services are suitable, and that Institution should not act or refrain from acting on the basis of the Outputs. Institution should evaluate the accuracy of any Outputs as appropriate for Institution's use case, including by using human review of the Outputs. Under no circumstances will Merlyn Mind be liable in any way 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 as a result of a user's interaction with the Chat Services. INSTITUTION ACKNOWLEDGES AND AGREES THE CHAT 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. INSTITUTION ACKNOWLEDGES AND AGREES THAT INSTITUTION SHOULD, AND WILL, EVALUATE THE ACCURACY OF ALL OUTPUTS.

D. EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED IN THIS AGREEMENT, MERLYN MIND PARTIES HEREBY FURTHER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, SYSTEM INTEGRATION, AND FREEDOM FROM COMPUTER VIRUSES. IN ADDITION, MERLYN MIND MAKES NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, EXPRESS, STATUTORY OR IMPLIED AS TO: (i) THE AVAILABILITY OF TELECOMMUNICATION SERVICES AND ACCESS TO THE MERLYN CLASSROOM SOLUTION AT ANY TIME OR FROM ANY LOCATION; AND (ii) ANY LOSS, DAMAGE, OR OTHER SECURITY INTRUSION OF THE TELECOMMUNICATION SERVICES.

E. THE MERLYN CLASSROOM SOLUTION DOES NOT INCLUDE, AND MERLYN MIND ASSUMES NO RESPONSIBILITY FOR, ANY THIRD-PARTY SOLUTION (INCLUDING THOSE THAT ARE BUNDLED OR INTEGRATED WITH A MERLYN CLASSROOM OFFERING AS PART OF A CO-BRANDED THIRD-PARTY PANEL OFFERING) OR ITS USE IN CONJUNCTION WITH THE MERLYN CLASSROOM SOLUTION OR ANY ELEMENT THEREOF.

F. Some jurisdictions limit or do not allow the disclaimer of implied or other warranties so the above disclaimers may not apply to the extent such jurisdictions' laws are applicable.

9. Limitations Of Merlyn Mind's Liability.

A. Under no circumstances, to the maximum extent permitted by law, will the Merlyn Mind Parties be responsible for personal injury or death or for any indirect, exemplary, special, punitive, incidental, or consequential losses or damages that are directly or indirectly related to: (a) the Merlyn Classroom Solution (including any associated accessories, the Merlyn Mind Materials and the Merlyn Mind Content); (b) use of or inability to use the Merlyn Classroom Solution, or the performance of the Merlyn Classroom Solution; (c) any Content; any (d) Third-Party Solutions, or their processing, integration or interoperability with the Merlyn Classroom Solution whether as standalone products or as included in Authorized Third-Party Panel Offerings; (e) Third-Party Solutions used to mount, display or move Merlyn Classroom Offerings; (f) any action taken in connection with an investigation by Merlyn Mind Parties or law enforcement authorities regarding your access to or use of the Merlyn Classroom Solution; (g) any errors or omissions in the Merlyn Classroom Solution's technical operation; (h) failure by Institution to obtain or maintain necessary Consents; or (i) any violation of this Agreement or applicable law by an Institution Party.

B. The above limitations of liability will apply even if any of these 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 an Institution brings 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 Classroom Solution). Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages of the sort that are described above, so the above limitation or exclusion may not apply.

C. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL MERLYN MIND PARTIES' TOTAL LIABILITY HEREUNDER, FOR ALL POSSIBLE DAMAGES, LOSSES, AND CAUSES OF ACTION IN CONNECTION WITH ACCESS TO AND USE OF THE MERLYN CLASSROOM SOLUTION AND YOUR RIGHTS UNDER THESE TERMS, EXCEED, IN THE AGGREGATE, THE GREATER OF (i) THE AMOUNT PAID BY INSTITUTION FOR THE MERLYN CLASSROOM SOLUTION TO MERLYN MIND OR AN AUTHORIZED RESELLER (AS APPLICABLE) HEREUNDER IN THE THREE MONTH PERIOD ENDING ON THE DATE THAT A CLAIM OR DEMAND IS FIRST ASSERTED, OR (ii) \$5,000. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

10. Term And Termination.

A. Term. The Term of this Agreement begins on the Effective Date and ends on the date the non-terminating party receives written notice that the other party has terminated the Agreement as set forth in Section 10(D). Any Subscription will end the earlier of (1) the termination of this Agreement and (2) the expiration date set forth in the Subscription.

B. Subscription Terms and Subscription Renewals. If a Subscription expires or is terminated while the Term remains in effect, the Institution and Instructors will only have access to Post-Subscription Functionality (if any) for the applicable Merlyn Classroom Offering. During the Term, with respect to expiring or expired Subscriptions, Institution may extend or renew its access to Subscribed Functionality for the subject Merlyn Classroom Offering by agreeing to a subsequent Subscription or renewed Subscription with Merlyn Mind or a Merlyn Mind authorized reseller (including resellers authorized by an authorized Merlyn Mind distributor), which may be subject to additional or updated terms and fees. Merlyn Mind may at its discretion end support for Symphony Classroom AI Hubs, Merlyn Origin, and other Merlyn Classroom Offerings that are not covered by a Subscription or which versions or models have been superseded, including by ending any Post-Subscription Functionality. Any use of Merlyn Classroom Offerings after Merlyn ends support shall be subject to Section 10(E)(6).

C. Right to Suspend Use. Merlyn Mind may immediately suspend or terminate the availability of the Merlyn Classroom Solution, any specific Merlyn Classroom Offering, any Functionality and/or Merlyn Mind Materials (and any elements and features of them), in whole or in part, for any reason, in Merlyn Mind's sole discretion, and without advance notice or liability in the event that (i) Merlyn Mind discontinues offering the Merlyn Classroom Solution, the applicable Merlyn Classroom Offering or Merlyn Mind Materials to all customers in the applicable jurisdiction, (ii) the Institution's continued use of the Merlyn Classroom Solution, Merlyn Classroom Offering, or Merlyn Mind Materials could result in a material data security or privacy risk or risk of non-compliance with applicable laws, (iii) providing the Merlyn Classroom Solution or any Merlyn Classroom Offering, and/or providing interoperability of the Merlyn Classroom Solution or Merlyn Classroom Offering with any given Third-Party Solution, in accordance with this Agreement is reasonably likely to result in material business or legal harm to Merlyn Mind or is impracticable from a business or technical standpoint (provided that Authorized Third-Party Panel Offerings may be subject to terms set forth in Subscriptions or Offering Specific Terms), or (iv) Institution defaults or breaches the terms of any Subscription or this Agreement (including with respect to payment). Merlyn Mind may end a suspension if it determines the cause has been resolved to Merlyn Mind's satisfaction.

D. Agreement Termination. In addition to any other express termination right set forth in this Agreement:

1. Following the expiration date of the last expiring Subscription, either party may terminate this Agreement for any reason upon thirty (30) days' advance written notice;

2. Either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement or any Subscription, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach; provided, that Merlyn Mind reserves the right to terminate only those Subscriptions for the applicable Merlyn Classroom Offerings that are the subject to the breach;

3. Either party may terminate this Agreement, effective immediately upon written notice to the other party, if the other party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business; or

4. Either party may terminate this Agreement pursuant to Section 12 in accordance with its terms.

E. Effect of Termination. Upon any termination or expiration of the Agreement:

1. All Subscriptions will terminate;

2. All Functionality, services, support and maintenance of and access to the Merlyn Classroom Solution (including

any individual Merlyn Classroom Offerings) shall immediately cease, and the Merlyn Classroom Solution shall no longer be operable, subject to Section 10(E)(6) below;

3. Institution shall immediately discontinue use of the Merlyn Classroom Solution (including any individual Merlyn Classroom Offerings);

4. Institution will not be entitled to any refund for any reason from Merlyn Mind;

5. If Institution has Registered, Merlyn Mind will delete the Institution's Registrations in the IT Administrator Portal and Instructor Enrollments in the Merlyn Instructor Portal and delete any associated Personal Information within 90 days of termination of this Agreement, or within 30 days of a valid deletion request or notification from an Institution of an Institution User account termination, unless Merlyn Mind is required by applicable law or legal obligation to retain such information. In such case, Merlyn Mind will continue to treat Personal Information in accordance with the Merlyn Mind Classroom Solution Privacy Policy and this Agreement until such time as the Personal Information is deleted.

6. The Merlyn Classroom Solution, including Symphony Classroom AI Hubs, Merlyn Origin, or Authorized Third-Party Panel Offerings, is not intended or permitted for use following termination of this Agreement and shall be deemed as having reached End of Support; accordingly Institution shall cease all further use, including use of any Post-Subscription Functionality. Any further use or attempted use is in violation of this Agreement and, without limiting Merlyn Mind's rights and remedies, at Institution's sole risk and without any Merlyn Mind warranty, support, or other obligations. Institution assumes all liability, and the Merlyn Mind Parties disclaim all liability, under any claim or cause of action arising from or in connection with the Merlyn Classroom Solution or any Merlyn Classroom Offering or Offerings, or use thereof in any way, after the termination of this Agreement.

F. Survival. The provisions of this Agreement, which by their nature should survive suspension or termination of this Agreement will survive, including Sections 6, 7, 8, 9, 10, 11, and 13.

11. Governing Applicable Law And Dispute Resolution.

A. Unless a different choice of governing law is expressly required by the laws of the state in which the Institution is located, this Agreement and any disputes relating to it will be governed by the laws of the State of New York and of the United States, without regard to principles of conflicts of laws. To the extent that any applicable laws of the state in which the Institution is located expressly require that this Agreement and any disputes relating to it be governed by such state laws, then the laws of such state will govern.

B. Unless another venue is required by applicable state law, if the Institution resides in the United States, disputes shall be solely adjudicated in the Supreme Court of the State of New York or in the U.S. Federal District Court located in New York County, New York.

C. Before taking any other legal action regarding any claim that Institution may have in connection with this Agreement, Institution must first submit a complaint to legal@merlyn.org to enable Merlyn Mind to resolve the claim with Institution. If the parties fail to resolve the claim in this manner in a reasonable timetable, or if any other claim or dispute in connection with these terms arises, it shall be resolved in the exclusive jurisdiction and venue as specified above. Merlyn Mind may seek injunctive or other equitable relief to protect its intellectual property rights in any court of competent jurisdiction at any time.

12. Agreement Changes.

A. Modifications. Merlyn Mind may make changes to the Agreement at its discretion. Merlyn Mind will provide 30 days' notice of the changes: (i) via the email address on record for the Institution; and/or (ii) prominent display in the IT Administrator Portal and/or Merlyn Instructor Portal. Changes will be effective 30 days after the notice unless otherwise stated.

B. Institution's Termination Rights.

1. If Merlyn Mind makes changes to the Agreement that are materially adverse to the Institution, not related to changes in law, and affect previously purchased Merlyn Classroom Offerings, the Institution may request to terminate the Agreement for those specific offerings.

2. The Institution must notify Merlyn Mind in writing within 15 days of the change notice, specifying the affected purchases.

3. Merlyn Mind will, at its election, either exempt those purchases from the changes to the Agreement or terminate the Agreement for those purchases. If terminated, any hardware devices shall be deemed to have reached End of Support and Merlyn Mind will promptly issue a prorated refund for the unused prepaid service period starting from the termination date.

C. Acceptance of Changes. Institution's continued use of the Merlyn Classroom Solution after changes take effect implies acceptance of the new terms, except as provided in the termination rights above.

13. General Provisions.

A. Operation of Merlyn Classroom Solution; International Issues. Merlyn Mind controls and operates the Merlyn Classroom Solution from its U.S.-based offices in the U.S.A. If Institution uses the Merlyn Classroom Solution from outside of the U.S., Institution is doing so on its own initiative and is responsible for compliance with applicable local laws regarding online conduct and acceptable content, if and to the extent local laws apply. To the extent permitted by law, Merlyn Mind reserves the right to limit the availability of the Merlyn Classroom Solution and/or the provision of any content, program, product, service, or other feature described or available on the Merlyn Classroom Solution to any person, entity, geographic area, or jurisdiction, at any time and in Merlyn Mind's sole discretion, and to limit the quantities of any content, program, product, service, or other feature that Merlyn Mind provides. The parties hereto disclaim any application to this Agreement of the Convention on Contracts for the International Sale of Goods.

B. Export Controls. Software related to or made available by the Merlyn Classroom Solution may be subject to export controls of the U.S.A. No software from the Merlyn Classroom Solution may be downloaded, exported, or re-exported (i) into (or to a national or resident of) any country or other jurisdiction to which the U.S.A. has embargoed goods, software, technology or services (which, as of the effective date of this Agreement, includes Cuba, North Korea, Iran, Sudan, and Syria), or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders, or (iii) to anyone on the U.S. Department of Commerce's Bureau of Industry and Security Entities List as published in the Export Administration Regulations (including entities engaged in weapons of mass destruction proliferation in various countries and persons and entities that are suspected of diverting U.S. origin items to embargoed countries or terrorist end-uses). Institution is responsible for complying with all trade regulations and laws both foreign and domestic. Except as authorized by law, Institution agrees and warrants not to export or re-export the software to any country, or to any person, entity, or end-user subject to U.S. export controls, including as set forth in subsections (i) – (iii) above.

C. Severability; Interpretation, Conflicts with Subscription and Offering Specific Terms. If any provision of this Agreement is deemed invalid, unlawful, void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from this Agreement and the invalidity of the provision will not affect the validity or enforceability of the remainder of this Agreement (which will remain in full force and effect). To the extent permitted by applicable law, Institution agrees to waive, and Institution hereby waives, any applicable statutory and common law that may permit a contract to be construed against its drafter. Wherever the word "including" is used in this Agreement, the word will be deemed to mean "including, without limitation." In the event of any conflict between this Agreement and any term or provision of any Subscription, the terms and provisions of this Agreement will control; provided that conflicting provisions in the Offering Specific Terms shall control with respect to the applicable Merlyn Classroom Offering to the extent of that conflict excluding with respect to Section 9 (Limitations of Merlyn Mind's Liability).

D. Communications. Institution hereby consents to receive communications from Merlyn Mind electronically. Please note that Merlyn Mind is not obligated to respond to inquiries. Institution agrees that all agreements, notices, disclosures, and other communications that Merlyn Mind provides to Institution electronically satisfies any legal requirement that such communications be in writing.

E. Public Announcements. Except as required by applicable law, neither party shall issue or release any announcement, statement, press release or other publicity or marketing materials relating to the use of the Merlyn Classroom Solution by the Institution or otherwise use the other party's Trademarks without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned, or delayed.

F. Investigations; Cooperation with Applicable Law Enforcement. Merlyn Mind reserves the right, without any limitation, to: (i) investigate any suspected breaches of its Merlyn Classroom Solution security or its information technology networks, (ii) investigate any suspected breaches of this Agreement, (iii) involve and cooperate with law enforcement authorities in investigating any of the matters listed here, and (iv) prosecute violators of this Agreement.

G. Assignment. Merlyn Mind may assign its rights and obligations under this Agreement, in whole or in part, to any party at any time without any notice. This Agreement may not be assigned by Institution, and Institution may not delegate its duties under them, without the prior written consent of an officer of Merlyn Mind.

H. No Waiver. Except as expressly set forth in this Agreement, (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 this Agreement will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

I. Integration. This Agreement together with any Subscriptions, Offering Specific Terms, and other exhibits and schedules expressly incorporated herein by reference, constitute the entire agreement between the parties relating to the subject matter hereof and supersedes all prior communications, representations, or agreements, oral or written, by the parties relating thereto.

EXHIBIT A

Procedure For Alleging Copyright Infringement

A. Merlyn Mind will respond appropriately to notices of alleged copyright infringement that comply with the U.S. Digital Millennium Copyright Act (“**DMCA**”), as set forth below. If an Institution Party owns a copyright in a work (or represent such a copyright owner) and believes that such copyright in that work has been infringed by an improper posting or distribution of it via the Merlyn Classroom Solution, then Institution may send Merlyn Mind a written notice that includes all of the following:

1. a subject line that says: “DMCA Copyright Infringement Notice”;
2. a description of the copyrighted work that claimed to have been infringed or, if multiple copyrighted works are covered by a single notification, a representative list of such works;
3. a description of where the material claimed to be infringing or the subject of infringing activity is located that is reasonably sufficient to permit Merlyn Mind to locate the material (please include the URL of the Merlyn Classroom Solution on which the material appears);
4. the applicable Institution Party’s full name, address, telephone number, and e-mail address;
5. a statement by the applicable Institution Party that he/she/it have a good faith belief that use of the material is not authorized by the copyright owner, its agent, or the law;
6. a statement by the applicable Institution Party, made under penalty of perjury, that all the information in the notice is accurate, and that the applicable Institution Party is the copyright owner or is authorized to act on the behalf of the owner of an exclusive right that is allegedly infringed; and
7. the applicable Institution Party’s electronic or physical signature.

B. DMCA Notices must be submitted to Merlyn Mind at 8 West 40th Street, New York, NY 10018 or legal@merlyn.org. Please note that there can be substantial legal penalties for false claims.

EXHIBIT B

Merlyn Mind COPPA Notice to Institutions

COPPA: DIRECT NOTICE TO EDUCATIONAL INSTITUTIONS ACTING AS AGENTS FOR PARENTS WITH CHILDREN UNDER THE AGE OF 13 WITH RESPECT TO A CHILD'S PARTICIPATION IN THE USE OF THE MERLYN MIND CLASSROOM SOLUTION

Under the United States' Children's Online Privacy Protection Act ("COPPA"), online service providers such as Merlyn Mind, Inc. ("Merlyn Mind," "we," or "us") must provide parental notification and obtain verifiable parental consent before collecting Personal Information from Children under the age of 13 (collectively, "Children", and each a "Child") except in limited situations (for exceptions to this consent requirement, please see [16 CFR § 312.5\(c\)](#)). This notice is being provided in connection with the Merlyn Mind Customer Agreement by and between Merlyn Mind and the Institution, which is incorporated herein by reference.

In cases where Institutions contract with online service providers such as Merlyn Mind to offer programs solely for the benefit of Participants and schools, COPPA allows for such Institutions to act as a parent's agent and to consent under COPPA to the collection of a Child's Personal Information on the parent's behalf. Pursuant to the Merlyn Mind Customer Agreement, Merlyn Mind Classroom Solution Instructor Terms of Use available at [<https://cdn.merlyn.org/terms/origin-privacy-policy.pdf>] (collectively, the "Agreement"), and Merlyn Mind Classroom Solution Privacy Policy available at [<https://cdn.merlyn.org/terms/origin-terms-of-use.pdf>], Merlyn Mind will not collect Personal Information from a Child unless that Child's Institution, acting as the parent's agent, has agreed to obtain the required parental consent. Any terms we use in this Direct Notice (as defined below) without defining them have the definitions given to them in the Agreement.

In order for Merlyn Mind to rely on consent obtained from a Child's Institution instead of the parent under COPPA, Merlyn Mind must provide the Institution with the same type of direct notice regarding its practices as to the collection, use, or disclosure of Personal Information from Children as it would otherwise be required to provide to the parent (the "Direct Notice").

Parental Consent

Merlyn Mind relies on Institutions to consent under COPPA to the collection of a Child's information on the parent's behalf; to collect the contact information needed to obtain parental consent; and to provide the means by which parental consent can be obtained regarding the collection, use, and disclosure of such information. By using the Merlyn Mind Classroom Solution, Institutions are agreeing to obtain verifiable parental consent in compliance with COPPA and any other applicable laws. A sample COPPA Parental Consent Form is attached to this Direct Notice as [Annex 1](#).

Merlyn Mind intends to collect Personal Information from Participants, including Children, but only to the extent that is reasonably necessary to provide the Merlyn Mind Classroom Solution. Merlyn Mind requires parental consent for the collection, use, and/or disclosure of any Child's Personal Information. Merlyn Mind will not collect, use, or disclose any Personal Information from a Child if parental consent is not provided.

Personal Information Merlyn Mind Intends to Collect About Children

Should parental consent be provided, Merlyn Mind may collect the following Personal Information about a Child:

- First and last name, to the extent provided by the Institution
- Email address, to the extent provided by the Institution
- Classes enrolled in
- Grades or transcripts
- Identifying information in the Child's assignments or discussions
- Audio recordings of the Child and transcriptions of such audio recordings, which are not used to identify individual Participants, including Children
- Audio recordings and transcriptions of such audio recordings of the Child's environment, which are not used to identify individual Participants, including Children

- Transcripts of audio recordings captured by the Merlyn Mind Classroom Solution
- Identifying information in any Content, emails, letters, texts, or other communication sent to us or disclosed through the Merlyn Mind Classroom Solution, including but not limited to discussion boards
- Any derivatives of such data, including but not limited to audio recordings and transcripts of audio recordings

For a more complete explanation of what data is collected, how it is collected, how it is used, and who may have access to it, please see the Merlyn Mind Classroom Solution Privacy Policy (linked above).

Disclosure of Personal Information

Because Merlyn Mind is intended to be used in groups within the classroom and/or school setting, the Personal Information of Participants, including Children, may be disclosed to the Institution, Instructors, IT Administrator, or other Participants.

Additionally, Merlyn Mind may disclose the Personal Information of Participants with:

- Our Services Providers and Analytics Partners
- Parties that the Institution, Instructor, or IT Administrator authorizes, accesses, or authenticates through the Merlyn Mind Classroom Solution

We may also disclose Personal Information we collect about Participants to the extent required to fulfil a legal requirement or in the event of a business transfer.

For additional information about how Merlyn discloses the Personal Information of Participants and the purposes for such disclosures, please see “How We Disclose Your Personal Information” and “Our Commercial or Business Purposes for Collecting or Disclosing Personal Information” in the Merlyn Mind Classroom Solution Privacy Policy (linked above) .

Privacy Policy

The Merlyn Mind Classroom Solution Privacy Policy (linked above) provides further information about our privacy practices.

Access and Deletion

Upon request from the Institution, Merlyn Mind will provide a description of the types of Personal Information collected; an opportunity to review the Child’s Personal Information and the right to have the information deleted; and the opportunity to prevent further use or online collection of a Child’s Personal Information.

If a Child’s Personal Information is collected without parental consent or collected beyond the scope needed for participation in the Merlyn Mind Classroom Solution, Merlyn Mind will delete such information as soon as possible. If you believe that information from a Child has been provided in violation of these terms, please contact us at privacy@merlyn.org.

As a best practice, Merlyn Mind recommends that Institutions make this notice available to parents and allow parents to review the Personal Information collected by Merlyn Mind.

Annex 1 to Exhibit B

SAMPLE VERIFIABLE PARENTAL CONSENT MERLYN MIND CLASSROOM SOLUTION

Notice to Parents of Participants under the age of 13

In compliance with the Children’s Online Privacy Protection Act (COPPA), parents or legal guardians of children under 13 years of age must consent to the collection, use, and disclosure of the Personal Information of their Children by Merlyn Mind, Inc. (“Merlyn Mind”) in conjunction with providing the Merlyn Mind Classroom Solution. Below are a few useful links for more information about this notice and Merlyn Mind’s privacy practices that may be helpful to you:

- The Merlyn Mind Classroom Solution Privacy Policy can be found at [<https://cdn.merlyn.org/terms/origin-privacy-policy.pdf>]
- For more information on COPPA, please visit: www.ftc.gov/tips-advice/businesscenter/guidance/complying-coppa-frequently-asked-questions.

Subject to your consent, the Merlyn Mind Classroom Solution will be used in your student’s classroom and, as such, your child’s Personal Information may be provided to Merlyn Mind. This information may include your child’s first and last name, email address, classes enrolled in, grades or transcripts, audio recordings and transcriptions of such audio recordings of your child and their environment (which are not used to identify your child), as well as any other Personal Information provided to Merlyn Mind by an Institution or Instructor.

The Personal Information collected by Merlyn Mind is necessary in order to provide your child with the Merlyn Mind Classroom Solution. **Please be advised that without receipt of this signed form within a reasonable period of time, we cannot use the Merlyn Mind Classroom Solution.** You may revoke your consent, send us a request to delete your child’s information, or limit further collection and use of your child’s information by contacting your child’s instructor or educational institution. Please be advised that any such revocation, request, or limitation could impact our ability to provide your Child with coursework.

In order to continue the use of the Merlyn Mind Classroom Solution, please print the following form, fill in the requested information, sign the consent form, and return a scanned copy to your child’s teacher. By filling in and signing the consent form below, you hereby ratify and agree to the Merlyn Mind Classroom Solution Privacy Policy (linked above) on behalf of your child and acknowledge Merlyn Mind’s collection of personal information. If you have any questions about this form, please do not hesitate to contact your child’s instructor or educational institution.

I represent and warrant that the information provided below is true and accurate. By signing below, I hereby consent to the collection and use of my child’s Personal Information by Merlyn Mind.

Verifiable Consent Form
Child’s Full Name: _____
Child’s Email Address: _____
Child’s Birthdate: _____
Parent/Legal Guardian Name (PLEASE PRINT): _____
Parent/Legal Guardian Relationship to Child: _____
Parent/Legal Guardian Email Address: _____
Parent/Guardian Signature: _____
Date: _____

EXHIBIT C

The current version of the Instructor Terms of Use can be found at <https://cdn.merlyn.org/terms/origin-terms-of-use.pdf>.