

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

Last Updated: March 28, 2024¹

Welcome to the Merlyn Mind Classroom Solution! These Customer Terms are between Merlyn Mind Inc., located at 8 West 40th Street, 20th Floor, New York, NY 10018 (“**Merlyn Mind**”), and the educational institution or other entity on whose behalf you accept these terms (“**Customer**”). These Terms apply unless Customer has a separate written contract with Merlyn Mind and become effective when you accept them or begin using the Merlyn Mind Classroom Solution, whichever occurs first (“**Effective Date**”).

1. WHAT THESE CUSTOMER TERMS COVER

1.1 Summary. These Customer Terms apply to Customer’s use of Merlyn Mind’s educational products and services (“**Merlyn Mind Classroom Solution**”). Merlyn Mind Classroom Solution may capture and process voice audio and Personal Information and include generative artificial intelligence features. As further detailed in [Section 4](#), Customer is responsible for obtaining any consents that are required to use Merlyn Mind Classroom Solution under applicable laws (“**Consent**”), such as the Children’s Online Privacy Protection Rule (“**COPPA**”) and Family Educational Rights and Privacy Act (“**FERPA**”). Pursuant to COPPA, [Exhibit A](#) of these Customer Terms provides notice of Merlyn Mind’s collection, use, and disclosure of personal information from children in connection with the Merlyn Mind Classroom Solution.

1.2 Merlyn Mind Classroom Solution. Merlyn Mind Classroom Solution includes Merlyn Mind’s evolving collection of educational products and services, such as Merlyn Origin, Symphony Classroom Hub, our instructor and IT administrator portals, out-of-classroom tools, voice-enabled remotes, third-party panel integrations, and other software and services. A “**Merlyn Mind Classroom Offering**” is an individual product or service in the Merlyn Mind Classroom Solution, which can be bundled or offered separately.

1.3 Subscriptions. Merlyn Mind Classroom Offerings can be purchased from Merlyn Mind or an authorized reseller under different prices, licenses, and other terms (“**Subscriptions**”). If you do not agree to these terms and have already made payments for a Subscription, please contact your reseller or the other party from which the purchase was made for assistance.

1.4. Relevant Parties. In some places, these Terms refer to “**Customer Parties**”, which includes: (i) Customer; (ii) teachers and other users of the Customer (“**Instructors**”); (iii) Customers’ IT support staff (“**IT Administrators**”); and (iv) anyone else, including students, who uses the Merlyn Mind Classroom Solution (“**Participants**”).

2. LICENSE, UPDATES, OWNERSHIP, FEEDBACK

2.1 License to Use Merlyn Mind Classroom Solution and Materials. Merlyn Mind grants Customer a limited, non-exclusive, non-transferable license to use the Merlyn Mind Classroom Solution for educational purposes by Instructors, IT Administrators, and Participants as authorized in these Customer Terms.

2.2 Updates and Discontinuation. Merlyn Mind may provide updates to the Merlyn Mind Classroom Offerings from time to time, which Customer may be required to install if not done automatically. Merlyn Mind may also change or discontinue any Merlyn Mind Classroom Offering at its discretion. If Merlyn Mind

¹ These terms apply to customers using Merlyn Classroom Solution under our online terms on or after March 28, 2024. The prior version is available at <https://cdn.merlyn.org/terms/merlyn-classroom-solution-customer-agreement.pdf>.

discontinues an entire Merlyn Mind Classroom Offering, then Merlyn Mind may terminate the relevant Subscription and will either: (i) make available a replacement Merlyn Mind Classroom Offering with similar functionality; or (ii) provide a prorated refund for the unused prepaid service period starting from the termination date as its (or its reseller's) only obligation to Customer. Customer will stop using terminated Merlyn Mind Classroom Offerings in accordance with [Section 10.5\(f\)](#).

2.3 Trials and Betas. Merlyn Mind may provide trial or beta versions of Merlyn Mind Classroom Offerings ("**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.

2.4 Ownership and Retained Rights. Merlyn Mind owns and retains all intellectual property in the Merlyn Mind Classroom Solution and any related materials.

2.5 Feedback. Customer Parties may provide feedback to Merlyn Mind about the Merlyn Mind Classroom Solution, such as suggestions for product improvements or features, survey responses, and feedback via a user interface. Customer, as permitted by law, assigns Merlyn Mind any rights in the feedback, and Merlyn Mind may use the feedback with restriction.

2.6 Shipping of Hardware Components. If Merlyn Mind (and not a reseller) sends hardware to Customer, Customer takes on the risk of loss once the hardware is delivered unless other terms are agreed upon. Otherwise, the risk of loss is based on the terms between Customer and the authorized reseller.

3. CUSTOMER RESPONSIBILITY, RISKS OF USE, AND RESTRICTIONS

3.1 Customer's Responsibility for Use.

- a. Overall Responsibility. Customer must ensure that everyone who uses the Merlyn Mind Classroom Solution complies with the law, these Customer Terms, and the [Merlyn Mind Classroom Solution Instructor Terms](#) ("**Instructor Terms**"). Customer is also responsible for ensuring that Instructors review and agree to the Instructor Terms.
- b. AI Services. Merlyn Mind may provide generative AI chat, content creation services, and other AI functionality ("**AI Services**"). AI Services may generate responses, text, and other output ("**Output**") from prompts or other information provided by Customer Parties ("**Inputs**"). Customer Parties may use these Outputs for Customer's educational purposes during the term of the Subscription. Customer is responsible for determining that the AI Services are suitable for its intended uses before using them.
- c. Offering Specific Terms. Customer must also comply with terms specific to certain Merlyn Mind Classroom Offerings that Merlyn Mind may make available on its website, within the IT Administrator Portal, or within specific Subscriptions ("**Offering Specific Terms**").
- d. Third-Party AI Providers and Third-Party AI Use Rules. Merlyn Mind may use third parties to provide certain AI Services (each a "**Third-Party AI Provider**"). Customer agrees to, and will ensure that Customer Parties, comply with the Third-Party AI Provider's terms for AI Services 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 B](#), which is part of these terms and may be updated from time to time.

3.2 Potential Risks.

- a. Voice-Enabled Offerings. Some Merlyn Mind Classroom Offerings may receive or capture voice audio of Instructors, IT Administrators, and Participants. Customer acknowledges that offerings that include microphones could in some cases capture unintended audio. Customer should securely store any remote controls and mute microphones (as applicable) when the offering is not in use.
- b. Use of Generative AI. Artificial intelligence is an emerging technology. AI Services can output inaccurate or biased information despite efforts Merlyn Mind and its providers have undertaken to limit these risks. Customer should not rely on AI Services, including any Outputs, for critical decision-making and should instead use them as a tool to augment human judgment and discretion. Customer should also evaluate the accuracy of any Outputs, including by using human review as applicable. Customer should not, and will ensure that Customer Parties do not, use any AI Services or Outputs for automated decision-making or profiling, where the use could impact any individual's rights or well-being, including education enrollment or opportunities.
- c. Password and Access Security. Customer is responsible for keeping passwords and access credentials secure and must notify Merlyn Mind of any unauthorized access.

3.3 Usage Restrictions. Customer will not, and will ensure that Customer Parties do not, use the Merlyn Mind Classroom Solution (i) for any commercial purposes that fall outside its standard educational activities, or (ii) to engage in harmful, unlawful, or offensive activities. Customer will not, and will ensure that Customer Parties do not, (i) violate any third-party rights, including intellectual property rights, (ii) reverse engineer, disassemble, 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.

4. PRIVACY

4.1 Merlyn Mind's Data Processing. Merlyn Mind processes Personal Information in accordance with the [Merlyn Mind Classroom Solution and Website Privacy Policy](#) (the "**Privacy Policy**"). "**Personal Information**" means information that identifies, could reasonably identify, or otherwise relates to a natural person that is protected under applicable laws.

4.2 Customer's Privacy Law Compliance. Customer will comply with all applicable laws, rules, and regulations, including any related to the privacy, confidentiality, and security of protected Personal Information. Customer is responsible for providing all disclosures and obtaining necessary and required Consents to: (i) deploy and use the Merlyn Mind Classroom Solution in its classrooms and facilities; (ii) provide Customer Party information to Merlyn Mind, including Personal Information and Content of Instructors and Participants (or other Customer Parties); and (iii) permit Merlyn Mind to use Customer Party information, including Personal Information, as needed to provide the particular offering.

4.3 Family Education Rights and Privacy Act (FERPA). If Customer is subject to FERPA, Customer determines that Merlyn Mind has a "legitimate educational interest" in carrying out its duties in performance of these Customer Terms and agrees to designate Merlyn Mind as a "school official" as the term is used in FERPA at 34 CFR Section 99.31. Merlyn Mind will remain under the direct control of Customer with respect to the use and maintenance of student "personally identifiable information" from

“education records,” (each as defined in FERPA) and will use and share student personally identifiable information only for the limited purpose of providing the Merlyn Mind Classroom Solution.

4.4 Required Consents for Recordings and Minor Participants

- a. Consents for Voice Recordings. Merlyn Mind Classroom Solutions may record and process voice audio and transcripts. Customer is responsible for providing all disclosures and applicable notices (including the [Privacy Policy](#)) and obtaining Consents as required under applicable law to collect voice recordings by or on behalf of Customer.
- b. Consents for Minors’ Personal Information. Personal Information of Participants under the age of 13 in the U.S. or below the age of consent in other jurisdictions (“**Minor Participants**”) may be subject to privacy laws applicable to children’s data, including COPPA. Customer acknowledges and agrees that: (i) Merlyn Mind will only process Personal Information of Minor Participants subject to COPPA for the benefit of Customer and for no other commercial purpose; (ii) unless otherwise directed by Customer, Merlyn Mind does not process Personal Information of Minor Participants for the purpose of identifying the identity of such Minor Participant; and (iii) if Customer, in its sole discretion, chooses to use Merlyn Mind Classroom Solution in environments with Minor Participants, Customer must obtain and collect all Consents, including verifiable parental Consent under COPPA, as applicable, prior to Personal Information of such Minor Participants being provided to Merlyn Mind. Customer will immediately notify Merlyn Mind if the Personal Information of a Minor Participant has been provided to Merlyn Mind without Consent. If Merlyn Mind becomes aware that the Personal Information of a Minor Participant has been collected without appropriate Consent, Merlyn Mind will take appropriate steps to delete the Personal Information in accordance with applicable law.
- c. COPPA Direct Notice. Customer acknowledges and agrees to the Merlyn Mind COPPA Notice to Institutions in [Exhibit A](#) (“**Direct Notice**”).

5. ADDITIONAL CUSTOMER OBLIGATIONS

5.1 Registration, Onboarding, and Instructor Enrollment.

Before utilizing any Merlyn Mind Classroom Offerings, Customer must complete registration, onboarding, and/or Instructor enrollment, depending on the offering, as follows:

- a. Registration. IT Administrators are responsible for registering each offering and Instructors on the “**IT Administrator Portal**,” which is a Merlyn Mind website to manage the registration process for certain Merlyn Mind Classroom Offerings.
- b. Instructor Enrollment. Instructors enroll via the Instructor Portal or IT Administrator Portal after registration. This step includes accepting the [Instructor Terms](#) and acknowledging the [Privacy Policy](#). “**Instructor Portal**” is a website for Instructors to enroll, download applications, and personalize their use of the Merlyn Mind Classroom Offering.
- c. Onboarding. The process of setting up Merlyn Mind Classroom Offerings for instructional use, including technical configuration and setting up internet connectivity, as required for specific offerings.

5.2 Content Management and Responsibilities.

- a. General Use of Content. Customer grants Merlyn Mind a non-exclusive, perpetual, sublicensable, worldwide, royalty-free license to use, modify, and adapt Content to provide the Merlyn Mind Classroom Solution and related services to Customer Parties. “**Content**” means information (including Personal Information), data, materials, and intellectual property provided by Customer Parties, including derivative works of the foregoing. Content also includes all Inputs provided to the AI Services. Merlyn Mind will treat Personal Information contained in Content as set forth in these Customer Terms and the [Privacy Policy](#).
- b. Customer’s Responsibility for Content. Customer retains rights in and is responsible for all Content. Merlyn Mind may remove Content that it stores or hosts at its reasonable discretion, including when deemed necessary to comply with legal requirements.
- d. Customer’s Warranties Related to Content. Customer represents and warrants that: (i) it has all necessary rights and Consents for the Content; (ii) use of Content, including by Merlyn Mind as authorized in these Customer Terms, does not infringe any third-party rights; and (iii) the Content and its use with the Merlyn Mind Classroom Solution complies with these Customer Terms and applicable laws.
- e. Compliance with Content Rules. Customer must follow and ensure that all Customer Parties follow content rules stated in these Customer Terms and in the [Instructor Terms](#). Merlyn Mind’s policy for copyright infringement notification is described in **Exhibit C**.
- f. Aggregated Data. Merlyn Mind may process Content in an aggregated and anonymized form that does not identify Customer Parties or disclose other Confidential Information of Customer in compliance with applicable laws.

5.3 Internet Connection Requirement. Customer is responsible for obtaining, paying for, and configuring Internet access necessary for the Merlyn Mind Classroom Solution.

5.4 Use of Third-Party Solutions.

- a. Selection of Third-Party Solutions. 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**”). Customer is responsible for choosing compatible Third-Party Solutions for use with the Merlyn Mind Classroom Solution. Any activities of Customer Parties in connection with Third-Party Solutions are subject to the privacy policies, terms, and other rules of the operator of the Third-Party Solutions. Merlyn Mind may discontinue support for any Third-Party Solution at its convenience.
- b. Terms for Authorized Third-Party Panel Offerings. 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.

6. REPRESENTATIONS AND WARRANTIES

6.1 Customer represents and warrants to Merlyn Mind that:

- a. Customer has the legal authority and has obtained all necessary Consents for using the Merlyn Mind Classroom Solution and for sharing Customer Party information with Merlyn Mind, including Personal Information and Content.
- b. Customer has the legal right to allow Merlyn Mind to use Customer Party information, including Personal Information and Content as detailed in these Customer Terms.
- c. Customer Party information, Personal Information, and Content that Customer provides to Merlyn Mind does not violate any laws or infringe on any third-party rights.
- d. If required by applicable law, Customer has an executed a data sharing agreement, data protection agreement, or other equivalent agreement, that permits use of the Merlyn Mind Classroom Solution.
- e. The person agreeing to these Customer Terms on behalf of Customer has fully understood these Customer Terms and is authorized to bind Customer to the terms.

6.2 Merlyn Mind represents and warrants to Customer that the applicable Merlyn Mind Classroom Offering will comply with applicable laws when used by Customer as authorized by and in compliance with these Customer Terms.

7. INDEMNITY

7.1 To the extent permitted under applicable law, Customer agrees to indemnify, defend, and hold harmless Merlyn Mind and its subsidiaries and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, successors, and assigns (collectively, "**Merlyn Mind Parties**") from any claims, damages, losses, liabilities, or expenses (collectively, "**Claims and Losses**") arising from or related to:

- a. The use of Content and any Outputs within the Merlyn Mind Classroom Solution.
- b. Any use of the Merlyn Mind Classroom Solution by Customer Parties other than where the Claims and Losses are solely due to Merlyn Mind's material uncured breach of these Customer Terms where Customer is compliant with these Customer Terms.
- c. Violations of laws, rights, or regulations by Customer Parties in connection with the use of the Merlyn Mind Classroom Solution other than where the Claims and Losses are solely due to Merlyn Mind's material uncured breach of these Customer Terms and where Customer complies with these Customer Terms.
- d. Content provided by Customer Parties that infringes or violates third-party rights.
- e. The use of Third-Party Solutions with the Merlyn Mind Classroom Solution, or the processing of Content or other Personal Information by any third-party provider in connection with any Third-Party Solution.
- f. Any harm or damage resulting from Customer Parties' negligence or willful misconduct.

- g. Breach of any terms, representations, or warranties in these Customer Terms by Customer Parties, including failure to obtain necessary Consents or comply with Third-Party AI Use Rules.

Merlyn Mind will have the right to participate using a counsel of its choice and its cost in the defense of any Claim and Losses. Customer will obtain prior written consent of a Merlyn Mind Party before settling any Claims and Losses.

8. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

8.1 Hardware Warranties. Specific warranties for the hardware components of the Merlyn Mind Classroom Offerings, if any, are provided in the documentation accompanying the hardware.

8.2 General Disclaimer. EXCEPT FOR ANY EXPRESS WARRANTIES PROVIDED IN THESE CUSTOMER TERMS, THE MERLYN MIND CLASSROOM SOLUTION IS OFFERED “AS IS” AND MERLYN MIND PARTIES HEREBY 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 MIND CLASSROOM SOLUTION AT ANY TIME OR FROM ANY LOCATION; AND (II) ANY LOSS, DAMAGE, OR OTHER SECURITY INTRUSION OF THE TELECOMMUNICATION SERVICES.

8.3 AI Services Disclaimer. IF PROVIDED TO CUSTOMER, THE AI SERVICES (WHETHER PROVIDED BY MERLYN MIND OR THIRD-PARTY AI PROVIDERS) ARE OFFERED WITHOUT ANY WARRANTIES, AND CUSTOMER SHOULD NOT SOLELY RELY ON THESE SERVICES FOR DECISION-MAKING. CUSTOMER ACKNOWLEDGES AND AGREES 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. OUTPUT MAY CONTAIN ERRORS AND MISSTATEMENTS AND MAY BE INCOMPLETE. CUSTOMER ACKNOWLEDGES AND AGREES THAT CUSTOMER WILL EVALUATE THE ACCURACY OF ALL OUTPUTS AND NOT RELY ON OUTPUTS FOR IMPORTANT DECISION MAKING, INCLUDING ANY DECISIONS THAT IMPACT AN INDIVIDUAL’S RIGHTS OR WELL-BEING.

8.4 Third-Party Solutions. MERLYN MIND DISCLAIMS ALL RESPONSIBILITY FOR THIRD-PARTY SOLUTIONS, WHETHER STANDALONE OR INTEGRATED WITH MERLYN MIND CLASSROOM OFFERINGS. CUSTOMER’S USE OF THESE THIRD-PARTY SOLUTIONS IS AT ITS OWN RISK.

9. LIMITATIONS OF MERLYN MIND'S LIABILITY

9.1 Exclusion of Certain Damages. Merlyn Mind will not be liable for any indirect, special, incidental, consequential, or punitive damages, regardless of the cause. This includes, to the fullest extent permitted by applicable law, damages related to personal injury, death, loss of use, loss of data, interruption of business, or any other commercial damages or losses, arising out of or in connection with the Merlyn Mind Classroom Solution.

9.2 Cap on Liability. The total liability of Merlyn Mind for all claims under these Customer Terms, to the fullest extent permitted by applicable law, will not exceed: (i) the greater of the amount paid by Customer for the applicable Merlyn Mind Classroom Offering during the twelve (12) month period

immediately preceding the claim or \$5,000; (ii) or \$100 for Trials and Betas. This cap applies regardless of the form of the claim or action.

10. TERM AND TERMINATION

10.1 Duration of these Customer Terms. These Customer Terms together with other documents incorporated herein (including Subscriptions and exhibits) are a contractual agreement between Merlyn Mind and Customer that starts on the Effective Date and remains in effect until terminated by either party per the conditions set forth in this section (the “Term”).

10.2 Subscription Terms and Renewals. Access to Merlyn Mind Classroom Offerings ends when the applicable Subscription ends unless earlier terminated in accordance with these Customer Terms. Any access to a Merlyn Mind Classroom Offering after termination or expiration is provided solely at Merlyn Mind’s discretion and remains subject to these Customer Terms.

10.3 Merlyn Mind’s Suspension Rights. Merlyn Mind may immediately suspend access to the Merlyn Mind Classroom Solution if Customer breaches these Customer Terms or if continuing to provide the Merlyn Mind Classroom Solution poses legal or security risks as Merlyn Mind determines in good faith. In the event of such a suspension, Merlyn Mind will contact Customer and end the suspension when the issue has been resolved.

10.4 Conditions for Termination. Following the expiration date of the last expiring Subscription, either party may terminate these Customer Terms for any reason upon thirty (30) days' advance written notice. Either party may terminate these Customer Terms if the other party materially breaches the terms and fails to cure that breach within thirty (30) days of notice of breach, provided that Merlyn Mind reserves the right in its discretion to terminate the Agreement and all Subscriptions or only those Subscriptions for the applicable Merlyn Mind Classroom Offerings that are the subject to the breach. Either party may terminate these Customer Terms, effective immediately upon written notice to the other party, if the other party: (i) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (ii) 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; (iii) makes or seeks to make a general assignment for the benefit of its creditors; or (iv) 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

10.5 Effects of Termination. Upon any termination or expiration of these Customer Terms:

- a. All Subscriptions will terminate.
- b. All Functionality, services, support of, and access and rights to the Merlyn Mind Classroom Solution and individual Merlyn Mind Classroom Offerings will immediately cease in accordance with Section 10.5(f) below.
- c. Customer will immediately discontinue use of the Merlyn Mind Classroom Solution.
- d. Customer will not be entitled to any refund for any reason from Merlyn Mind except as otherwise expressly stated in these Customer Terms or an applicable Subscription with Merlyn Mind.
- e. If Customer has completed registration, Merlyn Mind will remove Customer's registrations from the IT Administrator Portal and Instructor enrollments from the

Instructor Portal. Any associated Personal Information will be deleted within 90 days of the termination of these Customer Terms, or within 30 days of receiving a valid deletion request or notification from Customer about an Instructor, IT Administrator, or Participant account termination, unless Merlyn Mind is legally required to retain such information. In such cases, Merlyn Mind will continue to handle Personal Information in accordance with the [Privacy Policy](#) and these Customer Terms until it is deleted.

- f. Any further use or attempted use of the Merlyn Mind Classroom Solution after termination is a violation of these Customer Terms and is at Customer's sole risk, without any warranty, support, or obligations from Merlyn Mind. Customer assumes all liability, and the Merlyn Mind Parties disclaim all liability, for any claims or actions arising from or related to the Merlyn Mind Classroom Solution after termination or expiration.

10.6 Survival. The provisions of these Customer Terms, which by their nature should survive suspension or termination of these Customer Terms will survive, including [Sections 6, 7, 8, 9, 10, 11, and 13](#).

11. GOVERNING LAW AND DISPUTE RESOLUTION; NO CLASS ACTIONS

11.1 Governing Law and Forum. These Customer Terms will be governed by and construed in accordance with the laws of the State of New York, United States, without giving effect to any choice or conflict of law provision or rule. Any disputes arising out of or in connection with these Customer Terms will be resolved in the courts located in New York County, New York, USA.

11.2 No Class Action Matters. CUSTOMER AND MERLYN MIND AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING OR AS AN ASSOCIATION.

12. MODIFICATIONS TO CUSTOMER TERMS.

12.1 Notification and Timing. Merlyn Mind may update, modify, or revise Customer Terms at any time to the extent permitted by law. Merlyn Mind will notify Customer via the email address on record for Customer, a notification via our Merlyn Mind Classroom Offerings, and/or prominent display in the IT Administrator Portal and/or Instructor Portal. Changes mandated by law or related to new service features take effect immediately unless otherwise stated by Merlyn Mind. Other changes become effective 30 days after Merlyn Mind has attempted to notify Customer.

12.2 Customer's Right to Object. If Merlyn Mind makes changes to the Agreement that are materially adverse to Customer, not related to changes in law, and affect previously purchased Merlyn Mind Classroom Offerings, Customer has the right to object to this change. Customer must communicate this objection in writing to Merlyn Mind within 30 days of receiving notice of the change, specifying the affected Merlyn Mind Classroom Offerings used by Customer and the changes objected to. Upon receiving a valid objection, Merlyn Mind will, at its election, either exempt those purchases from the changes to Customer Terms or terminate Customer Terms for those purchases. If terminated, Merlyn Mind will issue a prorated refund for the unused prepaid service period starting from the termination date as Merlyn Mind's and its authorized resellers' sole liability and Customer's sole remedy. Customer will immediately cease all use of the terminated Merlyn Mind Classroom Offerings in accordance with [Section 10.5](#).

12.3 Acceptance of Changes. Customer's continued use of the Merlyn Mind Classroom Solution after changes take effect will constitute Customer's acceptance of the new terms, except as provided in the termination rights provision above.

13. GENERAL PROVISIONS

13.1 Operation and International Use. Merlyn Mind operates the Merlyn Mind Classroom Solution from the U.S. If Institution uses it outside the U.S., it must follow local laws related to online conduct and Content. Merlyn Mind can limit the Merlyn Mind Classroom Solution's availability to any region or person at its discretion.

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

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

13.4 No Third-Party Beneficiaries. These Customer Terms do not confer any benefits on any third party unless explicitly stated.

13.5 Interpretation. "Including" and similar terms mean "including, but not limited to."

13.6 Conflicting Terms. If there's a conflict between these Terms and any Subscription terms, these Customer Terms will apply unless the Subscription terms: (i) are with Merlyn Mind (and not a reseller); and (ii) explicitly modify a provision of these Terms other than limitations of Merlyn Mind's liability in [Section 9](#). If there is a conflict with the Offering Specific Terms, the Offering Specific Terms will override these Customer Terms only for that conflict other than limitations of Merlyn Mind's liability in [Section 9](#).

13.7 Electronic Communications. Customer agrees to receive electronic communications from Merlyn Mind. All electronic communications meet the legal requirement of being in writing.

13.8 Public Announcements. Neither party will make public statements or use the other party's trademarks about the use of Merlyn Mind Classroom Solution without the other party's written consent.

13.9 Investigations and Law Enforcement Cooperation. Merlyn Mind may investigate breaches of the Merlyn Mind Classroom Solution's security or these Customer Terms and cooperate with law enforcement in such investigations.

13.10 Assignment. Merlyn Mind may assign, transfer, or delegate any of its rights and obligations in these Customer Terms, in whole or in part, to any affiliate, subsidiary, or successor in interest, or in connection with any corporate reorganization, merger, acquisition, spinoff, or sale of substantially all its assets without notice to Customer. Customer cannot assign or delegate its duties under these Customer Terms without written consent from an officer of Merlyn Mind. Any permitted assignment or delegation will be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.

13.11 No Waiver. No waiver is effective unless written and signed. Failure to enforce any part of these Customer Terms does not mean waiving that part or any other part of these Customer Terms.

13.12 Entire Agreement. These Customer Terms, including Subscriptions, Offering Specific Terms, and all other referenced documents, constitute the entire agreement between the parties, replacing all previous discussions and agreements with respect to the applicable Merlyn Mind Classroom Offerings.

Exhibit A
Merlyn Mind COPPA Notice to Institutions

COPPA DIRECT NOTICE TO EDUCATIONAL INSTITUTIONS PROVIDING CONSENT ON BEHALF OF PARENTS OF 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 (“**Direct Notice**”) is being provided in connection with the Merlyn Mind Customer Terms by and between Merlyn Mind and Customer (referred to as “**Institution**” in this Direct Notice). Any terms we use in this Direct Notice without defining them have the definitions given to them in the Customer Terms.

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 provide consent under COPPA to the collection of a Child’s Personal Information on the parent’s behalf. Pursuant to the Merlyn Mind Classroom Solution Customer Terms, [Merlyn Mind Classroom Solution Instructor Terms](#), and [Merlyn Mind Classroom Solution and Website Privacy Policy](#) (“**Privacy Policy**”), Merlyn Mind relies on the Child’s Institution to provide the required parental consent on behalf of the parent in order to collect Personal Information from the Child.

For Merlyn Mind to rely on consent provided by a Child’s Institution on behalf 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. Merlyn Mind is providing this information to Institution in this Direct Notice.

Personal Information Merlyn Mind Intends to Collect About Children

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.

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 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 Administrators, or other Participants.

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

- 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 fulfill 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 Privacy Policy (linked above).

Privacy Policy

The 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, the 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. Institution may send such requests to privacy@merlyn.org.

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 provide parents with an opportunity to review the Personal Information collected by Merlyn Mind.

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

PrepTime

- May be accessed and used by Instructors via the Instructor Portal or other interface
- Third-Party AI Provider: Google LLC
- Third-Party AI Use Rules: <https://policies.google.com/terms/generative-ai/use-policy>

EXHIBIT C
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 a Customer Party or third 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, distribution, or other use of it via the Merlyn Mind Classroom Solution, then Customer or the third party 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 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;
4. the applicable party’s full name, address, telephone number, and e-mail address;
5. a statement by the applicable party that he/she/it has 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 party, made under penalty of perjury, that all the information in the notice is accurate, and that the applicable 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 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.