

## MERLYN MIND CLASSROOM SOLUTION INSTRUCTOR TERMS OF USE

**PLEASE READ THIS AGREEMENT CAREFULLY. IT SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS FOR YOUR USE OF THE MERLYN MIND CLASSROOM SOLUTION.**

### Contents

#### Introduction and Overview

Welcome! You are interacting with a Merlyn Mind Classroom Solution (defined below), which is owned and operated by Merlyn Mind, Inc. (collectively, “**Merlyn Mind**,” “**we**,” “**our**,” or “**us**”). These Terms of Use (“Terms”) govern your use of any of our offerings that comprise the Merlyn Mind Classroom Solution (including but not limited to the Symphony Classroom Solution and Merlyn Origin) or references these Terms. These Terms include the provisions in this document as well as those in the [Privacy Policy](#) and any other relevant policies, as applicable.

You are a teacher, school official, instructor or IT administrator employed by or acting under the control or supervision of an educational institution (including, where applicable, a local education authority, free school, academy or educational trust) that has subscribed to and is making available one or more Merlyn Mind Classroom Solution for use in teaching environments at the institution’s location pursuant to a separate licensing arrangement between it and Merlyn Mind (“Subscription”).

The “Merlyn Mind Classroom Solution” is designed to help teachers facilitate classroom tasks, such as managing classroom applications (like web browsing and presentations) and devices (like laptops and monitors/smart boards), in an effort to enhance the teacher’s ability to focus on instruction, proficiently use classroom technology and move as desired throughout the classroom.

Because the Merlyn Mind Classroom Solution is capable of receiving and processing voice audio commands, uses or deployments of the Merlyn Mind Classroom Solution must be in accordance with applicable laws, including applicable Data Protection Legislation and with any necessary Consents (as defined below). Consequently, you may use the Merlyn Mind Classroom Solution only as authorized in these Terms.

Certain functionality of the Merlyn Mind Classroom Solution may require your Institution to obtain one or more Subscriptions from Merlyn Mind. In addition to these Terms, applicable agreements with your Institution may apply to your use of the Merlyn Mind Classroom Solution. Please check with your Institution to see the Subscription status for certain elements or components of the Merlyn Mind Classroom Solution.

These Terms constitute a written agreement between you and us, and they govern your use of the Merlyn Mind Classroom Solution. Specific provisions may apply or not apply to you depending on your (and your Institution’s) relationship with us.

Your acceptance of these Terms is required in order to use the Merlyn Mind Classroom Solution. If you do not agree with these Terms, do not use the Merlyn Mind Classroom Solution.

You represent (a) that you are of a legal age sufficient to agree to these Terms in accordance with applicable law, (b) are authorized by your education institution to enter into this agreement with us; (c) have read, understood, and agree to be bound by these Terms and (d) and acknowledge the Merlyn Mind Classroom Solution Privacy Policy, as amended from time to time.

## **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 use of one or more Merlyn Classroom Offerings that has not yet reached End of Support in accordance with the Documentation, with a Lawful Basis, only in accordance with applicable law and these Terms, to conduct Institution’s educational classes or related events at the Institution’s site(s) by Enrolled Instructors with Participants who have provided necessary Consents.

“Browser Extension” means a Merlyn Mind software application installed on an 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.

“Changes” means modifications, deletions and/or additions to the terms of these Terms.

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

“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 copyrightable materials and/or educational materials and intellectual property therein in any format that Instructors or Participants 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 Mind Classroom Solutions hereunder, including the terms of these Terms and the rules set forth in Section 5(B).

“Data Protection Legislation” means any applicable laws and regulations in any relevant jurisdiction relating to the use or processing of Personal Information including, as applicable: (i) EU Regulation 2016/679 as it forms part of the law of England and Wales by virtue of section 3 of the European Union (Withdrawal) Act 2018 (the “UK GDPR”); (ii) the Data Protection Act

2018 (“DPA”); (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003; (iv) California Privacy Rights Act of 2020 (“CCPA”); and (v) any binding guidance or codes of practice issued by a governmental or regulatory body or authority in relation to compliance with the foregoing; in each case, as updated, amended or replaced from time to time; and the terms “controller”, “data subject”, “processing” and “processor” shall have the meanings set out in the DPA.

“Desktop Application” means the Merlyn Mind software application for installation on an Instructor Device that provides for operability of the Merlyn Origin or 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 user manuals, handbooks, and guides relating to the Merlyn Mind Classroom Solutions provided by Merlyn Mind to Institution either electronically, on its web-site or in hard copy form.

“End of Support” means the offering lifecycle stage of a given Merlyn Classroom Offering when Merlyn Mind announces that 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.

“Enrollment” (and derivations thereof) means the completion by an Instructor of the process at the Merlyn Mind Teacher Portal opening and maintaining a Merlyn Mind account, including accepting the Instructor Terms of Use and acknowledging the Merlyn Mind Privacy Policy.

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

“Institution” means the school or educational authority who purchased the Merlyn Mind Classroom Solution for use by you. “Instructor” means an instructor, teacher, school official, representative, or agent employed by, working at the direction of, or acting under the control or supervision of the Institution or a school or educational authority under the control of the Institution, who is above the age of majority pursuant to applicable law. The Instructor is authorized by the IT Administrator to use and deploy the Merlyn Mind Classroom Solution.

“Instructor Device” means a computer, tablet, smartphone, or other computing device authorized by the Institution and used or managed by Instructor.

“IT Administrator” means the individual(s) specifically designated and authorized by the Institution to use the IT Administration Portal to (i) Register Instructors, (ii) Register and/or 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.

“Lawful Basis”, “Lawful Justification” (or derivations thereof as the context permits) means either Consent, or where the Merlyn Mind Classroom Solution is being used in the United Kingdom, an alternative lawful basis under Article 6 of the UK GDPR.

“Merlyn Classroom Offering” means the individual component of the Merlyn Mind Solutions. For the avoidance of doubt, the Symphony Classroom AI Hub, Merlyn Origin, and Authorized Third-Party Panel Offering are examples of a Merlyn Mind Solutions Offering.

“Merlyn Classroom Solution” means, as applicable, the Symphony Classroom Solution, Merlyn Origin, Merlyn Instructor Portal, IT Administration Portal, other Symphony Classroom Offerings and associated software and hardware and Updates made available by Merlyn Mind from time to time, which may include software and technology of Merlyn Mind’s third-party licensors.

“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 Mind Materials” means (i) materials and other items subject to copyright and other copyrightable material relating to Merlyn Mind’s offerings, including Documentation, and similar items from Merlyn Mind’s licensors and other third parties; (ii) trademarks of various parties, including those of Merlyn Mind; (iii) Documentation; and (iv) any other forms of intellectual property of Merlyn Mind.

“Merlyn Mind Parties” means Merlyn Mind, Inc. and its subsidiaries and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns.

“Merlyn Instructor Portal” means that website maintained by Merlyn Mind for the Enrollment of Instructors.

“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.

“Onboarding” (and derivations thereof) means the provisioning of duly Registered Authorized Third-Party Panel Offering or Symphony Classroom AI Hubs for Authorized Use by entering the settings for each Authorized Third-Party Panel Offering or Symphony Classroom AI Hub, connecting Remotes with the Authorized Third-Party Panel Offering or Symphony Classroom AI Hubs and connecting the Authorized Third-Party Panel Offering or Symphony Classroom AI Hubs to the Internet in a classroom or facility on a campus controlled by the Institution.

Merlyn Origin“Pair” (and derivations thereof) means to connect the applicable Instructor Device to a Registered Authorized Third-Party Panel Offering or Symphony Classroom AI Hub by logging on to an Enrolled Instructor’s Merlyn Mind account, opening the Browser Extension and following the designated pairing process steps.

“Participant” means any person, including students, whose presence or information, including Personal Information is captured or processed in connection with a Merlyn Mind Solution.

“Participant” does not include an Instructor or an IT Administrator.

“Personal Information” means information that identifies, could reasonably identify, or otherwise relates to a natural person that is protected as personal information under applicable law, including Voice Audio.

“Post-Subscription Functionality” means the capabilities or functions, if any, of a Merlyn Classroom Offering prior to End of Support if a respective Subscription for such Merlyn Classroom Offering was initially purchased and has expired or terminated.

“Registration” (and derivations thereof) means the completion of the registration process for each Institution Symphony Classroom AI Hub or Authorized Third-Party Panel Offering (or other Merlyn Mind Solutions Offering) and Instructor, as the case may be, at the IT Administrator Portal using current, complete and accurate information to the extent requested by Merlyn Mind.

“Remote” means a Merlyn Mind handheld remote control that (i) contains push to talk voice technology for Voice Audio processing by a Merlyn Classroom Offering and (ii) allows Instructors to control compatible Merlyn Classroom Offerings and Instructor Devices with Voice Audio, buttons or pointing.

“Subscribed Functionality” means functionality available by a Subscription, including the receipt and processing by the Authorized Third-Party Panel Offering, Merlyn Origin or Symphony Classroom AI Hub of Voice Audio (locally or in the cloud) and, if including Pairing, interoperation of the Merlyn Mind Classroom Solution with Third Party Solutions via Instructor Devices to access, process, transmit and display Content.

“Symphony Classroom AI Hub” means the Merlyn Mind physical device that includes far field microphones, speakers, and EdgeAI™ technology that connects to Instructor Devices and classroom equipment and resources (such as monitors, laptops and projectors) and the Internet.

“Symphony Classroom Solution” means the Symphony Classroom AI Hub, Desktop Application, Browser Extension and Remote.

“Third Party Solutions” means third-party websites, technologies, software, hardware, solutions or systems that are not owned, controlled, made available or operated by Merlyn Mind as part of the Merlyn Mind Classroom Solutions but are compatible with and used by Instructors as part of Authorized Use.

“Term” means the term of these Terms, as set forth in Section 8.

“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, improvements, and enhancements to the Merlyn Mind Classroom Solutions made available by Merlyn Mind from time to time.

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

2. **“Voice Enabled Offering” means a Merlyn Classroom Offering that can receive or capture Voice Audio.Merlyn Mind Classroom Solution and Merlyn Mind Materials, Ownership.**

A. **Merlyn Mind Classroom Solution and Merlyn Mind Classroom Solution Materials.** Subject to and in consideration for your compliance with these Terms, Merlyn Mind hereby grants you a limited, nonexclusive, nontransferable license to use Functionality of the Merlyn Mind Classroom Solution and Merlyn Mind Materials with respect to Merlyn Classroom Offerings that have been duly procured by the Institution through one or more Subscriptions (including Post-Subscription Functionality if applicable), including any software and firmware that may be included within the Authorized Third-Party Panel Offering, Symphony Classroom AI Hub or otherwise made available by Merlyn Mind for download and use, and applicable Documentation, in each case solely for Authorized Use.

B. **Modifications and Enhancements.** Merlyn Mind may provide you with Updates for your Instructor Device at its discretion. You agree that you are responsible for ensuring that Updates are downloaded and installed on your Instructor Device in a timely manner. All Updates are deemed to be part of the Merlyn Mind Classroom Solution and subject to these Terms.

C. **Ownership.** The Merlyn Mind Classroom Solution and the Merlyn Mind Materials, and all intellectual property therein and derivatives thereof, are owned or controlled by Merlyn Mind and its licensors and certain other third parties. All right, title, and interest in and to the Merlyn Mind Materials available via the Symphony Classroom Solution is the property of Merlyn Mind or its licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other intellectual property and unfair competition rights and laws to the fullest extent possible.

D. **Reservation of All Rights Not Granted as to Merlyn Mind Materials and Merlyn Mind Classroom Solution.** These Terms include only narrow, limited grants of rights to use and access the Merlyn Mind Classroom Solution and Merlyn Mind Materials. No other right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. All rights not expressly granted to you are reserved by Merlyn Mind and its licensors and other third parties.

3. **Authorized Use of the Merlyn Mind Classroom Solution.**

A. **Authorized Use.** The Merlyn Mind Classroom Solution is made available only for Authorized Use and for no other purpose. Authorized Use only includes Subscribed Functionality for specific Merlyn Classroom Offerings pursuant to valid Subscriptions and in accordance with their terms, and Post-Subscription Functionality for those Merlyn Classroom Offerings as applicable. Authorized Use of the Merlyn Mind Classroom Solution must be in accordance with the Documentation. Authorized Use does not include any use of a Merlyn Classroom Offering that has reached End of Support.

B. **Lawful Justification.** Your Institution will be responsible for ensuring that the receipt and processing of Content by a Authorized Third-Party Panel Offering , Symphony Classroom AI Hub and Merlyn Origin, and any other Merlyn Classroom Offering is in compliance

with applicable Data Protection Legislation and is Lawfully Justified, including obtaining any necessary Consents. You may not knowingly use the Merlyn Mind Classroom Solution, or allow the Merlyn Mind Classroom Solution to be used, in the absence of such Lawful Justification or necessary Consents.

C. **Subject to Institution Authority.** Your use of the Merlyn Mind Classroom Solution, including your account at the Merlyn Instructor Portal and the Merlyn software downloaded to your Instructor Device, is made available to you under the authority of your Institution and in your capacity as an Instructor at the Institution. In the event that you are no longer authorized by your Institution, you agree that you will immediately stop accessing or using the Merlyn Mind Classroom Solution.

#### **4. Registration and Enrollment.**

A. **Authorized Third-Party Panel Offering and Symphony Classroom AI Hub Onboarding.** The IT Administrator will complete Onboarding of each Authorized Third-Party Panel Offering and Symphony Classroom AI Hub prior to any Authorized Use.

B. **Instructor Enrollment and Pairing.**

1. As an Instructor, you must individually complete the Enrollment process at the Merlyn Instructor Portal prior to any use of the Merlyn Mind Classroom Solution.

2. Once you are Enrolled, you may download and install the Desktop Application and Browser Extension to your Instructor Device as authorized by your IT Administrator.

3. You must be Enrolled for Functionality to be operable.

#### **5. Materials and Content.**

A. **Content.**

1. **General.** You agree that the Merlyn Mind Classroom Solution is allowed to process, transmit and display Content. To the extent applicable, you grant Merlyn Mind a non-exclusive, unlimited, worldwide, perpetual, cost-free license to use the Content provided by you to enable it to provide the Merlyn Mind Classroom Solution to you and your Participants.

2. **Responsibility for Content.** You retain whatever right, title, and interest that you have in the Content provided by you and remain ultimately responsible for it. Merlyn Mind makes no assurance regarding the integrity or retention of such Content. Merlyn Mind reserves the right at its sole discretion and without liability to you to delete from the Merlyn Mind Classroom Solution, at any time and for any reason, any such Content.

3. **Personal Information Included in Content.** Personal Information that may be included in Content is processed in accordance with Merlyn Mind's then-current Privacy Policy, available at <https://cdn.merlyn.org/terms/origin-privacy-policy.pdf>. Institution Parties are solely responsible to provide Participants with any notices or disclosures, and to collect any

consents necessary related to the collection of Personal Information of such Participants, including those required under Data Protection Laws.

4. **Representations and Warranties Related to Your Content.** You represent and warrant that (a) you are the author and owner of the intellectual property and other rights to the Content that you use in connection with the Merlyn Mind Classroom Solution, or you have 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) such Content does not and, as to Merlyn Mind's permitted uses set forth in these Terms, will not infringe any intellectual property or other right of any third party; and (c) the Content will not violate these Terms (including the Content Rules), or cause injury or harm to any person.

B. **Content Rules.** You must follow the Content Rules below:

1. **Act Appropriately.** Content must not threaten, abuse, or harm others. Content must not be defamatory, slanderous, indecent, obscene, pornographic, or sexually explicit.
2. **Do Not Use for Inappropriate Purposes.** Content must not directly or indirectly promote any infringing, illegal, or other similarly inappropriate activity, or similarly be part of a course of conduct which may be reasonably inferred to lead to an infringing, illegal or inappropriate outcome.
3. **Don't Damage the Merlyn Mind Classroom Solution or Anyone's Computers or Other Symphony Classroom AI Hubs or Authorized Third-Party Panel Offering.** Content must not submit, "piggyback" or act as a vector for viruses, Trojan horses, spyware, or any other technologies or malicious code that could impact the operation of the Merlyn Mind Classroom Solution or any computer or other device.

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 the foregoing Content Rules. However, Merlyn Mind is not obligated to take any action not required by law.

C. **Feedback.** You hereby assign to Merlyn Mind all right, title, and interest (including any intellectual property rights) in any feedback you may choose to provide to Merlyn Mind regarding Merlyn Mind's products and/or services (including any survey, test and performance results, reports, suggestions, improvements, enhancements, and/or feature requests).

6. **Merlyn Mind Classroom Solution and Materials Use Restrictions.**

A. **Your Responsibility for Your Use.**

1. You acknowledge and agree that you are responsible for use of the Merlyn Mind Classroom Solution in the conduct of your classes or in your classroom, whether by you or Participants, and that Merlyn Mind has no control over and takes no responsibility or liability whatsoever for any use other than Authorized Use.



2. You are responsible for maintaining the security of your username, password and Merlyn Mind account.

3. You agree to promptly notify Merlyn Mind of any unauthorized use of the Merlyn Mind Classroom Solution, any known or suspected compromise of your username, password, or Merlyn Mind account, and any material error or difficulty encountered in accessing or using the Merlyn Mind Classroom Solution.

B. **Risks from Subscribed Functionality**. You acknowledge and agree that: (i) the Merlyn Mind Classroom Solution includes microphones and local processing technologies, and connects to the Internet; (ii) if activated and situated in certain deployments, the Merlyn Mind Classroom Solution when used with Subscribed Functionality is capable of receiving and processing sounds within range, which may include Voice Audio that is not intended or authorized to interact with or engage the Merlyn Mind Classroom Solution ; (iii) unless the Merlyn Mind Classroom Solution is turned off, or has its microphones muted or disabled, Subscribed Functionality allows the Merlyn Mind Classroom Solution to receive Voice Audio and (iv) Instructors and Participants with access to the Merlyn Mind Classroom Solution may be capable of using the Merlyn Mind Classroom Solution to access and display Content that is illegal or inappropriate via the Internet or Merlyn Mind Classroom Solution, subject to the Institution's network filters and counter to these Terms. You are responsible for ensuring that you do not use, operate or deploy a Merlyn Mind Classroom Solution in a manner that violates applicable law or these Terms.

C. **Physical Security and Muting of Symphony Classroom AI Hubs**. You will ensure that (i) the Symphony Classroom AI Hub is physically secure in a classroom or facility on a campus controlled by the Institution and kept with microphones muted or disabled when not in Authorized Use by you, and (ii) the Remote is secured when not in Authorized Use by you.

D. **Merlyn Mind Classroom Solution Restrictions**. You agree that you will not: (i) use the Merlyn Mind Classroom Solution for any commercial purpose not related to the normal business of the Institution; (ii) engage in any activities through or in connection with the Merlyn Mind Classroom Solution that seek to, attempt to, or do harm to any individuals or entities 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) subject to applicable law reverse engineer, decompile, disassemble, reverse assemble, or modify any Merlyn Mind Classroom Solution source or object code or any software or other products, services, or processes accessible through any portion of the Merlyn Mind Classroom Solution; (iv) engage in any activity that interferes with a user's access to the Merlyn Mind Classroom Solution or the proper operation of the Merlyn Mind Classroom Solution, or otherwise causes harm to the Merlyn Mind Classroom Solution, Merlyn Mind, or other users of the Merlyn Mind Classroom Solution; (v) interfere with or circumvent any security feature of the Merlyn Mind Classroom Solution or any feature that restricts or enforces limitations on use of or access to the Merlyn Mind Classroom Solution, the Merlyn Mind Materials, or the Content; (vi) attempt to gain unauthorized access to the Merlyn Mind Classroom Solution, other computer systems or networks connected to the Merlyn Mind Classroom Solution, through password mining or any other means; or (vii) otherwise violate these Terms.

E. **Materials Use Restrictions.** You agree that, in using the Merlyn Mind Classroom Solution, you will not: (i) monitor, gather, copy, or distribute the 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 Materials (including any images, text, or page layout); (iii) remove or cover all Trademark, copyright, and other intellectual property notices contained in such Materials; (iv) use such Materials in a manner that suggests an unauthorized association with any of our or our licensors’ products, services, or brands; (v) you will not make any modifications to such Materials; (vi) use or exploit such Materials in any way for any purpose other than educational purposes or as specifically permitted by these Terms; (vii) insert any code or product to manipulate such Materials in any way; (viii) access or use the Merlyn Mind 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 Mind Classroom Solution, without Merlyn Mind’s prior written consent.

F. **Use Via Internet Connection. Use of the Merlyn Mind Classroom Solution is available through Internet access and may require** software to enable such access. Your Institution will be responsible for these requirements.

G. **Trials and Betas.** Merlyn Mind may offer optional Trials and Betas. Use of Trials and Betas is permitted only for your internal evaluation during the period designated by Merlyn Mind (or if not designated, 30 days). Either party may terminate your 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 Five Hundred U.S. Dollars (US\$5000).

## **7. Privacy.**

Merlyn Mind maintains a Privacy Policy that describes how Merlyn Mind collects, uses, shares, stores, and otherwise processes Personal Information that is submitted to us or that we otherwise obtain or collect through the Merlyn Mind Classroom Solution and its services. The Privacy Policy is available at [URL].

**If your Institution is located within the United States, the following provisions apply:**

### **Family Educational Rights and Privacy Act (FERPA)**

As applicable, we ask Institution customers to designate us as a “school official” as the term is used in FERPA, 34 C.F.R. §99 et. seq. As a “school official,” we agree to be bound by the relevant provisions of FERPA, including that we will remain under the “direct control” of our Institutions with respect to the use and handling of any FERPA-protected “education records.”

### **Children’s Online Privacy Protection Act**

Personal Information of minor Participants may be subject to particular Data Protection Laws covering children’s data including Children’s Online Privacy Protection Act

(“COPPA”), which applies to the collection of Personal Information of individuals under the age of 13. We will only collect this Information for the benefit of the Institution and for no other commercial purpose. If your Institution chooses to use the Merlyn Mind Classroom Solution in environments with Participants under age 13 or otherwise under the age of consent in their country, your Institution must obtain any necessary prior, verifiable parental Consent. If we become aware that a minor Participant has provided us with, or we have otherwise collected, Personal Information without appropriate consent, we will take steps to delete it and comply with applicable obligations under Data Protection Laws.

## **8. Term and Termination.**

A. **Term.** These Terms commence upon the date of your receipt of or access to a Registered Device as authorized by your Institution, and shall terminate when you no longer have such access to a Registered Device, are no longer Enrolled, or are no longer authorized to use the Merlyn Mind Classroom Solution by your Institution, whichever occurs latest.

B. **Right to Suspend Operation.** Merlyn Mind may immediately suspend or terminate the availability of the Merlyn Mind Classroom Solution and Materials (and any elements and features of them) to you, in whole or in part, for any reason, in Merlyn Mind’s sole discretion, and without advance notice or liability.

C. **Effect of Termination.** Upon any termination or expiration of these Terms or the availability of the Merlyn Mind Classroom Solution and Merlyn Mind Materials, you understand and acknowledge that ongoing services, support and maintenance of the Merlyn Mind Classroom Solution shall cease, and that the software contained in the Authorized Third-Party Panel Offering and Symphony Classroom AI Hubs may no longer be operable.

## **9. Third Party Solutions.**

A. The Merlyn Mind Classroom Solution links to or integrates with certain Third Party Solutions as part of Subscribed Functionality and in particular when Paired. Your Institution is solely responsible for determining the Third Party Solutions that you may use with the Merlyn Mind Classroom Solution. Merlyn Mind may discontinue support of interoperability with any Third Party Solution at its convenience.

B. 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, or the interoperability of Third Party Solutions with the Merlyn Mind Classroom Solution elements provided by and proprietary to Merlyn Mind. 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 these Third Party Solutions.

C. Any of your activities 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.

## **10. Governing Law and Remedies.**

### **A. If your Institution is located within the United States:**

1. These Terms and any disputes relating to it will be governed by the laws of the State of New York and the United States, without regard to principles of conflicts of laws, unless a different choice of governing law is expressly required by the laws of the state in which your Institution is located.

2. Before taking any other legal action regarding any claim that you may have in connection with these Terms, you must first submit a complaint to [legal@merlyn.org](mailto:legal@merlyn.org) to enable Merlyn Mind to resolve the claim with you. If we 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 as set forth in this Section 10. Merlyn Mind may seek injunctive or other equitable relief to protect its intellectual property rights in any court of competent jurisdiction at any time.

3. **Binding Arbitration.** If we cannot resolve a dispute as set forth in Section 10(B) within sixty (60) days of receipt of the notice, then ANY AND ALL DISPUTES ARISING BETWEEN YOU AND MERLYN (WHETHER BASED IN CONTRACT, STATUTE, REGULATION, ORDINANCE, TORT— INCLUDING, BUT NOT LIMITED TO, FRAUD, ANY OTHER INTENTIONAL TORT OR NEGLIGENCE,—COMMON LAW, CONSTITUTIONAL PROVISION, RESPONDEAT SUPERIOR, AGENCY OR ANY OTHER LEGAL OR EQUITABLE THEORY), WHETHER ARISING BEFORE OR AFTER THE EFFECTIVE DATE OF THESE TERMS, MUST BE RESOLVED BY FINAL AND BINDING ARBITRATION. THIS INCLUDES ANY AND ALL DISPUTES BASED ON ANY PRODUCT OR SERVICE THAT IS PART OF THE MERLYN SOLUTION. For U.S. residents, the Federal Arbitration Act (“FAA”), not state law, shall govern the arbitrability of all disputes between Merlyn Mind and you regarding these Terms (and any Additional Terms) and the Merlyn Mind Classroom Solution, including the “No Class Action Matters” Section below. BY AGREEING TO ARBITRATE, EACH PARTY IS GIVING UP ITS RIGHT TO GO TO COURT AND HAVE ANY DISPUTE HEARD BY A JUDGE OR JURY. Merlyn Mind and you agree, however, that the applicable state, federal or provincial law, as contemplated in Section 10(A)(1) above, shall apply to and govern, as appropriate, any and all claims or causes of action, remedies, and damages arising between you and Merlyn Mind regarding these Terms and the Merlyn Mind Classroom Solutions, whether arising or stated in contract, statute, common law, or any other legal theory, without regard to any jurisdiction’s choice of law principles.

Disputes will be resolved solely by binding arbitration in accordance with the then-current Commercial Arbitration Rules (“Rules”) of the American Arbitration Association (“AAA”), except as modified herein, and the arbitration will be administered by the AAA. If a party properly submits the Dispute to the AAA for formal arbitration and the AAA is unwilling to set a hearing then either party can elect to have the arbitration administered by the Judicial Arbitration and Mediation Services Inc. (“JAMS”) using JAMS’ streamlined Arbitration Rules and Procedures, or by any other arbitration administration service that you and an officer or legal representative of Merlyn Mind consent to in writing. You and we will pay the administrative and arbitrator’s fees and other costs in accordance with the applicable arbitration rules; but if applicable arbitration rules or laws require Merlyn Mind to pay a greater portion or all of such fees and costs in order for

this Section 8 to be enforceable, then Merlyn Mind will have the right to elect to pay the fees and costs and proceed to arbitration. The arbitration will be conducted by a single arbitrator who will apply and be bound by these Terms and any Additional Terms, and will determine any Dispute according to applicable law and facts based upon the record and no other basis, and will issue a reasoned award only in favor of the individual party seeking relief and only to the extent to provide relief warranted by that party's individual claim. All issues are for the arbitrator to decide, except those issues relating to the scope and enforceability of the arbitration and class action waiver provisions are for the court to decide. This arbitration provision shall survive termination of these Terms or the Merlyn Mind Classroom Solution. You can obtain AAA and JAMS procedures, rules, and fee information as follows: AAA: 800.778.7879 and <http://www.adr.org> and JAMS: 800.352.5267 and <http://www.jamsadr.com>.

4. **Limited Time to File Claims.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IF YOU OR MERLYN WANT TO ASSERT A DISPUTE (BUT NOT AN DISPUTE INVOLVING INJUNCTIVE RELIEF) AGAINST THE OTHER, THEN YOU OR WE MUST COMMENCE IT WITHIN ONE (1) YEAR AFTER THE DISPUTE ARISES -- OR IT WILL BE FOREVER BARRED. Commencing means, as applicable: (a) by delivery of written notice; (b) filing for arbitration as set forth in Section 10(A) (3); or (c) filing an action in state, Federal or provincial court.

5. **Injunctive Relief.** The foregoing provisions of this Section 10 will not apply to any legal action taken by Merlyn Mind to seek an injunction or other equitable relief in connection with any loss, cost, or damage (or any potential loss, cost, or damage) relating to the Merlyn Mind Classroom Solution, Merlyn Mind Materials, and/or Merlyn Mind's intellectual property rights (including such that Merlyn Mind may claim may be in dispute), Merlyn Mind's operations, and/or Merlyn Mind's products or services.

6. **No Class Action Matters.** YOU AND Merlyn Mind AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING OR AS AN ASSOCIATION. Disputes will be arbitrated only on an individual basis and will not be joined or consolidated with any other arbitrations or other proceedings that involve any claim or controversy of any other party. There shall be no right or authority for any Dispute to be arbitrated on a class action basis or on any basis involving Disputes brought in a purported representative capacity on behalf of the general public, or other persons or entities similarly situated. But if, for any reason, any court with competent jurisdiction holds that this restriction is unconscionable or unenforceable, then our agreement in Section 10(B) to arbitrate will not apply and the Dispute must be brought exclusively in court pursuant to Section 10(F). Notwithstanding any other provision of this Section 10, any and all issues relating to the scope, interpretation and enforceability of the class action waiver provisions contained herein (described in this "No Class Action Matters" section), are to be decided only by a court of competent jurisdiction, and not by the arbitrator. The arbitrator does not have the power to vary these class action waiver provisions.

B. **If your Institution is located within the United Kingdom:**

1. These Terms and any disputes relating to it will be governed by the laws of England and Wales, without regard to principles of conflicts of laws.

2. Before taking any other legal action regarding any claim that you may have in connection with these Terms, you must first submit a complaint to [legal@merlyn.org](mailto:legal@merlyn.org) to enable Merlyn Mind to resolve the claim with you. If we 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 as set forth in this Section 10.

3. Injunctive Relief. Merlyn Mind may seek injunctive or other equitable relief to protect its intellectual property rights in any court of competent jurisdiction at any time or any other equitable relief in connection with, any loss, cost, or damage (or any potential loss, cost, or damage) relating to the Merlyn Mind Classroom Solution, Merlyn Mind Materials, and/or Merlyn Mind's intellectual property rights (including such Merlyn Mind may claim that may be in dispute), Merlyn Mind's operations, and/or Merlyn Mind's products or services.

## **11. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.**

A. THE MERLYN SOLUTION IS PROVIDED TO YOU ON AN "AS IS" 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: (i) the Merlyn Mind Classroom Solution (including the Materials and the Content); (ii) the functions, features, or any other elements on, or made accessible through, the Merlyn Mind Classroom Solution; (iii) any Third Party Solutions or other products, services, or instructions offered or referenced at or linked through the Merlyn Mind Classroom Solution; (iv) security associated with the transmission of Content transmitted to Merlyn Mind or via the Merlyn Mind Classroom Solution; (v) whether the Merlyn Mind Classroom Solution or the servers that make the Merlyn Mind Classroom Solution available are free from any harmful components; (vi) whether the information (including any instructions) on the Merlyn Mind Classroom Solution is accurate, complete, correct, adequate, useful, timely, or reliable or meet Institutions requirements or expectations; (vii) whether any defects to or errors on the Merlyn Mind Classroom Solution will be repaired or corrected; (viii) whether your access to the Merlyn Mind Classroom Solution will be uninterrupted; (ix) whether the Merlyn Mind Classroom Solution will be available at any particular time or location; and (x) whether your use of the Merlyn Mind Classroom Solution is lawful in any particular jurisdiction.

B. EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED IN THESE TERMS, MERLYN MIND PARTIES HEREBY FURTHER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION, AND FREEDOM FROM COMPUTER VIRUSES, AND TO THE EXTENT YOUR INSTITUTION IS IN THE UNITED STATES, WARRANTIES AS TO TITLE.

C. If Institution receives Chat Services, this Section 11(C) applies to Institution, Instructor and Participant's use and interaction with the Chat Services. You acknowledge and

agrees that the Chat Services are powered by artificial intelligence and that, in connection with access to and use of the Chat Services, you may have access to certain responses, outputs and text that are elicited directly or indirectly by you (collectively, “Outputs”). Subject to Institution’s compliance with the terms and conditions of this Agreement, Merlyn Mind grants you a right during the applicable Term to use the Outputs for the educational purposes, only as provided herein and only in accordance with Merlyn Mind’s Documentation. You acknowledge and agree that, notwithstanding anything to the contrary herein, all Outputs are provided “AS IS” and should be used at your own risk. Before using or interacting with the Chat Services, you are responsible for making your own determination that the Chat Services are suitable, and that you should not act or refrain from acting on the basis of the Outputs. You should evaluate the accuracy of any Outputs as appropriate for your 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 your interaction with the Chat Services. **YOU ACKNOWLEDGE AND AGREE 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. YOU ACKNOWLEDGE AND AGREE THAT YOU SHOULD, AND WILL, EVALUATE THE ACCURACY OF ALL OUTPUTS.**

D. 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.

## **12. LIMITATIONS OF MERLYN LIABILITY; YOUR REMEDIES.**

A. Under no circumstances will the Merlyn Mind Parties be responsible for personal injury or death (subject to the limitations of Section 12(E), if applicable) or for any indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages that are directly or indirectly related to: (i) the Merlyn Mind Classroom Solution (including the Materials and the Merlyn Content); (ii) use of or inability to use the Merlyn Mind Classroom Solution, or the performance of the Merlyn Mind Classroom Solution; (iii) any Content or Third Party Solutions, or their processing, integration or interoperability with the Merlyn Mind Classroom Solution; (iv) 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 Mind Classroom Solution; (v) any errors or omissions in the Merlyn Mind Classroom Solution’s technical operation; or (vi) failure by Institution to obtain or maintain necessary Consents.

B. The above limitations of liability will apply even if any of these or circumstances were foreseeable and even if Merlyn Mind Parties were advised of or should have known of the possibility of such losses or damages, regardless of whether 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 Mind 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. YOU AGREE THAT, SUBJECT TO THE FORGOING TERMS, YOUR EXCLUSIVE REMEDY AND ONLY RECOVERY FOR ANY DAMAGE YOU INCUR, SHALL BE LIMITED TO THE DIRECT DAMAGES (IF ANY) YOU ACTUALLY INCUR IN REASONABLE AND EXCLUSIVE RELIANCE ON THE MERLYN MIND CLASSROOM SOLUTION AND MERLYN MIND MATERIALS (EXCLUDING ANY CONTENT PROVIDED BY YOU), AND FOR WHICH WE MAY BE HELD LIABLE BY A COMPETENT COURT.

D. SUBJECT TO SECTION 12(E) BELOW (IF APPLICABLE) IN NO EVENT WILL MERLYN MIND'S TOTAL LIABILITY HEREUNDER WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE AND WHETHER IN CONNECTION WITH THESE TERMS OR ANY COLLATERAL CONTRACT, EXCEED THE GREATER OF THE AMOUNT ACTUALLY PAID BY YOU (IF ANY) IN RELATION TO THE PARTICULAR USE OF THE MERLYN MIND SOLUTION OR THE SUM OF \$1000 (ONE THOUSAND DOLLARS (OR ITS GBP EQUIVALENT)).

E. If your Institution is located in the United Kingdom: THE EXCLUSIONS AND LIMITATIONS OF LIABILITY IN SECTIONS 12(A) AND 12(B) SHALL APPLY TO THE FULLEST EXTENT PERMISSIBLE AT LAW, BUT MERLYN MIND DOES NOT EXCLUDE LIABILITY FOR:

1. DEATH OR PERSONAL INJURY CAUSED BY THE NEGLIGENCE OF MERLYN MIND, ITS OFFICERS, EMPLOYEES, CONTRACTORS OR AGENTS;
2. FRAUD OR FRAUDULENT MISREPRESENTATION;
3. ANY OTHER LIABILITY WHICH MAY NOT BE EXCLUDED BY LAW

13. **Agreement Changes.** Merlyn Mind may make Changes to these Terms at any time. In the event that we make Changes we will bring your attention to such Changes in a manner as required by law. In the event we make material Changes we will endeavor to provide you with such reasonable notice as is practicable. If you do not agree to such Changes, you must cease your use of the Merlyn Mind Classroom Solution and Merlyn Mind Materials. Your continued Authorized Use of the Merlyn Mind Classroom Solution and Merlyn Mind Materials signifies your acceptance of such Changes.

14. **General Provisions.**

A. **Severability; Interpretation.** If any provision of these Terms is deemed invalid, unlawful, void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from these Terms and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms (which will remain in full force and effect). To the extent permitted by applicable law, you hereby waive any applicable statutory and common law that may permit a contract to be construed against its drafter. Wherever the word “including” is used in these Terms, the word will be deemed to mean “including, without limitation.”



B. **Communications.** You hereby consent to receive communications from Merlyn Mind electronically. Please note that Merlyn Mind is not obligated to respond to inquiries. You agree that all agreements, notices, disclosures, and other communications that Merlyn Mind provides to you electronically satisfies any legal requirement that such communications be in writing. You may opt out of receiving such communications electronically by clicking on the unsubscribe link at the bottom of the email.

C. **Investigations; Cooperation with Law Enforcement; Termination; Survival.** Merlyn Mind reserves the right, without any limitation, to: (i) investigate any suspected breaches of its Merlyn Mind Classroom Solution security or its information technology networks, (ii) investigate any suspected breaches of these Terms, (iii) involve and cooperate with law enforcement authorities in investigating any of the matters listed here, and (iv) prosecute violators of these Terms. The provisions of these Terms, which by their nature should survive suspension or termination of these Terms will survive, including Sections 7, 8, 10, 11, 12 and 14.

D. **Exclusion of Third Party Rights.** If your Institution is located in the United Kingdom: Unless expressly provided in this Agreement, no term of the Agreement is enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

E. **Entire Agreement.** These Terms (and the documents referred to in it) contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter. Each party acknowledges that, in entering into these Terms, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this license or not) (“Representation”) other than as expressly set out in the Terms (and the documents referred to in it). Each party agrees that the only rights and remedies available to it arising out of or in connection with a Representation shall be for breach of contract. Nothing in this Section shall limit or exclude any liability for fraud.

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

G. **No Waiver.** Except as expressly set forth in these Terms, (i) no failure or delay by a party in exercising any of such party’s rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.