

SYMPHONY CLASSROOM SOLUTION INSTRUCTOR TERMS OF USE

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

Contents

Introduction and Overview

Welcome! You are interacting with our Symphony 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 Symphony Classroom Solution or references these Terms.

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 purchased and is making available the Symphony Classroom Solution for use in teaching environments at the institution’s location pursuant to a separate licensing arrangement between it and Merlyn Mind.

The “Symphony 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 Symphony Classroom Solution is capable of receiving and processing voice audio commands, certain uses or deployments of the Symphony 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 Symphony Classroom Solution only as authorized in these Terms.

Certain functionality of the Symphony Classroom Solution requires your Institution to obtain one or more subscriptions from Merlyn Mind. Please check with your Institution to see the Subscription status for certain elements or components of the Symphony Classroom Solution.

These Terms constitute a written agreement between you and us, and they govern your use of the Symphony Classroom Solution. Specific provisions may apply or not apply to you based on whether your Institution is located in the United Kingdom or the United States; any such provisions will be clearly marked and the remainder will apply to you regardless of the location of your Institution.

Your use of the Symphony Classroom Solution constitutes your acceptance of these Terms. If you do not agree with these Terms, do not use the Symphony 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 Symphony Classroom Solution [Privacy Policy](#), as amended from time to time.

1. Definitions.

“**Authorized Use**” means the conduct of Institution educational classes or related events at the Institution’s site(s) by Enrolled Instructors with Participants who have provided necessary Consents, using one or more Symphony Classroom Offerings that has not yet reached End of Support in accordance with the Documentation, with a Lawful Basis, and in accordance with applicable law.

“**Browser Extension**” means a Merlyn Mind software application installed on an Internet browser on an Instructor Device that facilitates connectivity among the Symphony Classroom AI Hub, the Desktop Application and the Remote Control Unit and enables Internet navigation and Content display in response to Voice Audio or the Remote.

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

“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 Symphony Classroom Solution 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: (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; and (iv) 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 interoperability of the Instructor Device with the Remote and Symphony Classroom AI Hub for use with the Symphony Classroom Solution.

“Documentation” means Merlyn Mind's user manuals, handbooks, and guides relating to the Symphony Classroom Solution 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 Symphony 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 Symphony 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 Symphony 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 Symphony 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 Institution to use the IT Administration Portal to (i) Register Instructors, (ii) Register and Onboard the Symphony Classroom AI Hubs and (iii) register any other Symphony Classroom Offerings as required.

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

“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.

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

“Pair” (and derivations thereof) means to connect the applicable Instructor Device to a Registered 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, attending or present while the Symphony Classroom Solution is used or deployed. “Participant” does not include an Instructor or an IT Administrator.

“Personal Information” means information that identifies or relates to a specific, 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 Symphony Classroom Offering prior to End of Support if a respective Subscription for such Symphony 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 other Symphony Classroom 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 near field voice processing by the Symphony Classroom AI Hub and (ii) allows Instructors to control the Symphony Classroom AI Hub and Instructor Device with buttons or pointing functionality.

“Subscribed Functionality” means functionality available by a Subscription, including the receipt and processing by the Symphony Classroom AI Hub of Voice Audio (locally or in the cloud) and, if including Pairing, interoperation of the Symphony 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 Offering” means the individual components of the Symphony Classroom Solution. For the avoidance of doubt, the Symphony Classroom AI Hub is an example of a Symphony Classroom Offering.

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

“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 Symphony Classroom Solution 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.

“Updates” means modifications, improvements, and enhancements to the Symphony Classroom Solution 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 Symphony Classroom Solution.

2. Symphony Classroom Solution and Symphony Classroom Solution Materials, Ownership.

A. **Symphony Classroom Solution and Symphony 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 Symphony Classroom Solution and Merlyn Mind Materials with respect to Symphony 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 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 Symphony Classroom Solution and subject to these Terms.

C. **Ownership.** The Symphony 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 Symphony Classroom Solution.** These Terms include only narrow, limited grants of rights to use and access the Symphony 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 Symphony Classroom Solution.

A. **Authorized Use.** The Symphony Classroom Solution is made available only for Authorized Use and for no other purpose. Authorized Use only includes Subscribed Functionality for specific Symphony Classroom Offerings pursuant to valid Subscriptions and in accordance with their terms, and Post-Subscription Functionality for those Symphony Classroom Offerings as applicable. Authorized Use of the Symphony Classroom Solution must be in accordance with the Documentation. Authorized Use does not include any use of a Symphony 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 Symphony Classroom AI Hub is in compliance with applicable Data Protection Legislation and is Lawfully Justified, including obtaining any necessary Consents. You may not knowingly use the Symphony Classroom Solution, or allow the Symphony Classroom Solution to be used, in the absence of such Lawful Justification or necessary Consents.

C. **Subject to Institution Authority.** Your use of the Symphony 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 Symphony Classroom Solution.

4. **Registration and Enrollment.**

A. **Symphony Classroom AI Hub Onboarding.** The IT Administrator will complete Onboarding of each 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 Symphony 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 Symphony 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 Symphony 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 Symphony 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.

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 Symphony 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:

- **Act Appropriately.** Content must not threaten, abuse, or harm others. Content must not be defamatory, slanderous, indecent, obscene, pornographic, or sexually explicit.
- **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.

- **Don't Damage the Symphony Classroom Solution or Anyone's Computers or Other Symphony Classroom AI Hubs.** 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 Symphony 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. **Symphony 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 Symphony 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 Symphony 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 Symphony Classroom Solution.

B. **Risks from Symphony Classroom AI Hub Subscribed Functionality.** You acknowledge and agree that: (i) the Symphony Classroom AI Hub includes microphones and local processing technologies, and connects to the Internet; (ii) if activated and situated in certain deployments, the Symphony Classroom AI Hub 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 Symphony Classroom AI Hub; (iii) unless the Symphony Classroom AI Hub is turned off, or has its microphones muted or disabled, Subscribed Functionality allows the Symphony Classroom AI Hub to receive Voice Audio and (iv) Instructors and Participants with access to the Symphony Classroom AI Hub may be capable of using the Symphony Classroom AI Hub to access and display Content that is illegal or inappropriate via the Internet or a Paired Symphony Classroom AI Hub, 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 Symphony Classroom AI Hub 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. **Symphony Classroom Solution Restrictions.** You agree that you will not: (i) use the Symphony 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 Symphony 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 Symphony Classroom Solution source or object code or any software or other products, services, or processes accessible through any portion of the Symphony Classroom Solution; (iv) engage in any activity that interferes with a user's access to the Symphony Classroom Solution or the proper

operation of the Symphony Classroom Solution, or otherwise causes harm to the Symphony Classroom Solution, Merlyn Mind, or other users of the Symphony Classroom Solution; (v) interfere with or circumvent any security feature of the Symphony Classroom Solution or any feature that restricts or enforces limitations on use of or access to the Symphony Classroom Solution, the Merlyn Mind Materials, or the Content; (vi) attempt to gain unauthorized access to the Symphony Classroom Solution, other computer systems or networks connected to the Symphony 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 Symphony 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 Symphony 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 Symphony Classroom Solution, without Merlyn Mind’s prior written consent.

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

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 Symphony Classroom Solution and its services. The Privacy Policy is available [here](#).

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

We operate in compliance with the Children’s Online Privacy Protection Act (“COPPA”) and applicable laws covering children’s data. If our Institutions choose to use the Symphony Classroom Solution in environments with Participants under age 13 or otherwise under the age of consent in their country, we ask the Institution to 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 other applicable COPPA obligations.

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 Symphony Classroom Solution by your Institution, whichever occurs latest.

B. **Right to Suspend Operation.** Merlyn Mind may immediately suspend or terminate the availability of the Symphony 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 Symphony Classroom Solution and Merlyn Mind Materials, you understand and acknowledge that ongoing services, support and maintenance of the Symphony Classroom Solution shall cease, and that the software contained in Symphony Classroom AI Hubs may no longer be operable.

9. Third Party Solutions.

A. The Symphony 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 Symphony 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 Symphony 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 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 Symphony 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 Symphony 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 Symphony 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 Symphony 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 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 Symphony 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: (a) the Symphony Classroom Solution (including the Materials and the Content); (b) the functions, features, or any other elements on, or made accessible through, the Symphony Classroom Solution; (c) any Third Party Solutions or other products, services, or instructions offered or referenced at or linked through the Symphony Classroom Solution; (d) security associated with the transmission of Content transmitted to Merlyn Mind or via the Symphony Classroom Solution; (e) whether the Symphony Classroom Solution or the servers that make the Symphony Classroom Solution available are free from any harmful components; (f) whether the information (including any instructions) on the Symphony Classroom Solution is accurate, complete, correct, adequate, useful, timely, or reliable or meet Institutions requirements or expectations; (g) whether any defects to or errors on the Symphony Classroom Solution will be repaired or corrected; (h) whether your access to the Symphony Classroom Solution will be uninterrupted; (i) whether the Symphony Classroom Solution will be available at any particular time or location; and (j) whether your use of the Symphony 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. 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: (a) the Symphony Classroom Solution (including the Materials and the Merlyn Content); (b) use of or inability to use the Symphony Classroom Solution, or the performance of the Symphony Classroom Solution; (c) any Content or Third Party Solutions, or their processing, integration or interoperability with the Symphony Classroom Solution; (d) any action taken in connection with an investigation by Merlyn Mind Parties or law enforcement authorities regarding your access to or use of the Symphony Classroom Solution; (e) any errors or omissions in the Symphony Classroom Solution’s technical operation; or (f) 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 Symphony 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 SYMPHONY 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 endeavour 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 Symphony Classroom Solution and Merlyn Mind Materials. Your continued Authorized Use of the Symphony 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 Symphony 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.