

## **EARLY ACCESS PROGRAM CUSTOMER AGREEMENT**

This Early Access Program Customer Agreement (“Agreement”) is entered into as of the date of the last signature of a party affixed hereto (“Effective Date”) by and between \_\_\_\_\_, an educational provider located at \_\_\_\_\_ (“Institution”) and Merlyn Mind, Inc., located at 405 Lexington Avenue, Suite 3504, New York, NY 10174 (“Merlyn Mind”).

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

### **Introduction and Overview.**

This Agreement governs Institution’s deployment and use of the Merlyn Solution, including the technology commercially known as the “Symphony Classroom” and “Symphony Classroom AI Hub”, for use in classroom instruction. Because the Merlyn Solution is capable of capturing and interpreting Voice Audio (as defined below), certain uses or deployment of the Merlyn Solution may require the consent of persons as a matter of applicable law.

This Agreement governs the use of Symphony Classroom AI Hubs and the Merlyn Solution procured by the Institution in connection with the Merlyn Mind Early Access Program. Subsequent procurements of additional or upgraded Symphony Classroom AI Hubs may be subject to additional or separate contract terms.

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

### **1. Definitions.**

“Authorized 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, and in accordance with the Documentation and applicable law.

“Browser Extension” means a Merlyn Mind software application installed on an Instructor’s Internet browser 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.

“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.

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

“Claims and Losses” shall have the meaning set forth in Section 15.

“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 Solution hereunder, including the terms of this Agreement and the rules set forth in Section 5B.

“Desktop Application” means the Merlyn 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 Merlyn Solution.

“Documentation” means Merlyn Mind’s user manuals, handbooks, and guides relating to the Merlyn Solution provided by Merlyn Mind to Institution either electronically or in hard copy form.

“Enrollment” (and derivations thereof) means the completion by an Instructor of the process at the Merlyn Instructor Portal

(or the IT Administrator Portal if Instructor is also the IT Administrator) for opening and maintaining a Merlyn Mind account, including accepting the Instructor Terms of Use and acknowledging the Merlyn Mind Privacy Policy.

“Functionality” means Full Functionality and Limited Functionality.

“Full Functionality” means functionality available by Pairing, including the receipt and processing by the Symphony Classroom AI Hub of Voice Audio (locally or in the cloud,) and interoperation of the Merlyn Solution with Third Party Solutions via Instructor Devices to access, process, transmit and display Content,

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

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

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

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

“Instructor Terms of Use” means the terms of agreement for use of the Merlyn Solution and Pairing by Instructors.

“IT Administrator Portal” means a Merlyn Mind website that enables the IT Administrator to Register Symphony Classroom AI Hubs and identify Instructors who will be authorized to Enroll and Pair.

“IT Administrator” means the individual(s) specifically designated and authorized by the Institution to Register Instructors and Register and Onboard through the IT Administration Portal (i) the Symphony Classroom AI Hub or (ii) an Instructor.

“Limited Functionality” means the receipt and processing of Voice Audio or Remote actions by Symphony Classroom AI Hubs that are not Paired, including the access and display of limited information provided by Merlyn Mind or embedded in the Symphony Classroom AI Hubs.

“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 Solution” means the Symphony Classroom AI Hub, Desktop Application, Browser Extension, Remote, Merlyn Instructor Portal, IT Administration Portal 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 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 Merlyn Solution is used or deployed. “Participant” does not include an Instructor.

“Personal Information” means information that identifies or relates to a specific, natural person, as defined as personal information under applicable law, including Voice Audio.

“Registration” (and derivations thereof) means the completion of the registration process for each Institution Symphony Classroom AI Hub 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 Desktop Application with buttons or pointing functionality.

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

“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 Solution but are compatible with and used by Instructors as part of Authorized Use.

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

“Term” means the term of this Agreement, as set forth in Section 8.

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

## **2. Merlyn Solution and Merlyn Mind Materials, Ownership.**

**A. Merlyn Solution and Merlyn Mind Materials.** Subject to Institution’s compliance with the terms of this Agreement, Merlyn Mind hereby grants Institution a limited, nonexclusive, nontransferable license to use the Merlyn Solution and Merlyn Mind Materials, including any software and firmware that may be included within the Symphony Classroom AI Hub or Remote or otherwise made available by Merlyn Mind for download and use hereunder, and applicable Documentation, in each case solely for Authorized Use.

**B. Modifications and Enhancements.** Merlyn Mind may provide Institution with Updates at its discretion. For Updates that are not provided “over the air” for automatic installation, Institution agrees that it is responsible for ensuring that all Updates are downloaded and installed on each Symphony Classroom AI Hub and/or Instructor Device, as applicable, in a timely manner. All Updates are deemed to be part of the Merlyn Solution and subject to this Agreement.

**C. Ownership.** The Merlyn Solution and the Merlyn Mind Materials 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 Merlyn 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, trade secret, 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 Solution.** This Agreement includes only narrow, limited grants of rights to Merlyn Mind Materials and to use and access of the Merlyn Solution. No

other right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise under common law or in equity. All rights not expressly granted to Institution are reserved by Merlyn Mind and its licensors and other third parties.

### **3. Authorized Use of the Merlyn Solution; Consents.**

**A. Authorized Use Only.** The Merlyn Solution, once Registered and Onboarded, is authorized solely for Authorized Use and for no other purpose. Authorized Use may include Limited Functionality or, if Paired, Full Functionality. The Institution is responsible for ensuring that all use of the Merlyn Solution is an Authorized Use, and that such use is only in classrooms and facilities on a campus controlled by the Institution.

**B. Documentation.** Authorized Use of the Merlyn Solution must be in accordance with the Documentation.

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

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

#### **A. Symphony Classroom AI Hub Registration.**

1. The Institution will designate an authorized and qualified employee as the IT Administrator for the purposes of Registering and Onboarding the Symphony Classroom AI Hubs. The IT Administrator will create an Institution account (that covers schools and educational authorities under its control) at the IT Administrator Portal.

2. The IT Administrator is required to accept the Instructor Terms of Use on behalf of herself/himself, and acknowledge Merlyn Mind's Privacy Policy on his/her own behalf.

3. The IT Administrator is required to Register Symphony Classroom AI Hubs at Merlyn Mind's IT Administrator Portal prior to any deployment or use of the Symphony Classroom AI Hubs by providing complete and accurate information requested by Merlyn Mind.

4. The IT Administrator is required to Register those Instructors who will be authorized to Pair and use Full Functionality on the Institution's Symphony Classroom AI Hubs. Merlyn Mind will provide access codes to such Registered Instructors for the purpose of allowing Instructors to Enroll and to Pair Instructor Devices with Symphony Classroom AI Hubs.

**B. Symphony Classroom AI Hub Onboarding.** The IT Administrator is required to complete Onboarding of each Symphony Classroom AI Hub prior to any Authorized Use, which may include setting local or cloud-based Voice Audio processing by the Merlyn Solution on certain versions of Symphony Classroom AI Hubs (or following Updates that provide such option).

#### **C. Instructor Enrollment and Pairing.**

1. Institution shall ensure that each Instructor individually completes the Enrollment process at the Merlyn Instructor Portal prior to any use of the Merlyn Solution.

2. Duly Enrolled Instructors or the IT Administrator, as the case may be, will download and install the Desktop Application and Browser Extension to Instructor Devices.

3. Enrolled Instructors wishing to use Full Functionality must Pair the Instructor Device with the Symphony Classroom AI Hub.

**D. Updated Registrations and Enrollments.** The Institution shall require the IT Administrator to immediately remove

and delete Instructors from the Institution account who are no longer authorized to Pair and use Full Functionality (including in the event that such Instructor no longer is employed, associated or affiliated with the Institution) and notify Merlyn Mind within 2 business days of each removal and deletion.

## **5. Content and Feedback.**

### **A. Content.**

1. **General.** Institution agrees that it permits the Merlyn Solution to process, transmit and display Content. To the extent of Institution's rights, Institution grants Merlyn Mind a non-exclusive, perpetual, unlimited, worldwide, cost-free license to use, modify, and adapt Content, and created derivative works of the foregoing, to provide the Merlyn Solution to the Institution Parties, including Instructors and Participants.

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

3. **Confidentiality of Content.** Personal Information that may be included in Content is processed in accordance with Merlyn Mind's [Privacy Policy](#).

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

**B. Content Rules.** Use of the Merlyn Solution is subject to the Content rules set forth in the Instructor Terms of Use. Merlyn Mind may take any legally available action that it deems appropriate, in its sole discretion, with respect to Content that Merlyn Mind reasonably believes violates any Instructor Terms of Use. However, with respect to Content, Merlyn Mind is not obligated to take any action not required by applicable law.

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

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

### **A. Institution Responsibility for Use.**

1. Institution acknowledges and agrees that it has control of and full responsibility for use of the Merlyn Solution by its Instructors, Participants, and any other Institution Party and their compliance with this Agreement. For clarity, in the event Institution is a school board or other entity contracting on behalf of multiple schools or education authorities under its control, Institution shall procure and ensure, and remain fully responsible for, the full compliance with this Agreement by such schools and educational authorities and all other Institution Parties. Merlyn Mind has no control over and takes no responsibility or liability whatsoever for any use that is not Authorized Use.

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

**B. Risks from Symphony Classroom AI Hub Functionality.** The Institution acknowledges and agrees 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 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, both Limited Functionality and Full Functionality allow the Symphony Classroom AI Hub to receive Voice Audio and (iv) Institution Parties and others with access to the Symphony Classroom AI Hub may choose to use 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. The Institution is responsible for ensuring that Symphony Classroom AI Hubs are not used, operated or deployed in a manner that violates applicable law or this Agreement.

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

**D. Physical Security and Muting of Symphony Classroom AI Hubs.** Institution shall ensure that (i) Symphony Classroom AI Hubs are physically secure in a classroom or facility on a campus controlled by the Institution and kept with microphones muted or disabled when not in Authorized Use by an Instructor, and (ii) Remotes are secured when not in Authorized Use by an Instructor.

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

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

**G. Use Via Internet Connection.** Use of the Merlyn Solution is available through Internet access and may require Third Party Solutions to enable such access. Institution agrees that it is solely responsible for these requirements, including any applicable changes, updates, and fees as well as the terms of agreement with mobile device and telecommunications providers.

## **7. Privacy.**

The Institution shall at all times comply with all applicable international, federal, state, provincial, and local laws, rules, and regulations, currently in effect and as they become effective, including any that relate to the privacy, confidentiality, and/or

security of protected personal information in connection with the Merlyn Solution, its deployment, and any use or elements thereof. Institution is solely responsible for providing and obtaining all necessary and required notices and consents to: (i) deploy and use the Merlyn Solution in its classrooms and facilities on a campus controlled by the Institution; (ii) share, enable the provision of, or otherwise make available Instructor and Participant information, including Personal Information, and Content to Merlyn Mind in connection with Merlyn Solution and pursuant to the Agreement and (iii) permit Merlyn Mind to use Institution information and Instructor and Participant information, including Personal Information, and Content as described in this Agreement.

Merlyn Mind will comply with all applicable international, federal, state, provincial, and local laws, rules, and regulations, currently in effect and as they become effective, including any that relate to the privacy, confidentiality, and/or security of protected personal information in its provision of the Merlyn Solution. Merlyn Mind maintains a Privacy Policy, as amended from time to time in accordance with the terms of that Privacy Policy, available [here](#). In the event that Institution is subject to the Family Educational Rights and Privacy Act (“FERPA”), Institution determines that Merlyn Mind has a “legitimate educational interest” in carrying out its duties in performance of this Agreement, and agrees to designate Merlyn Mind as a “school official” as the term is used in FERPA 34 CFR Section 99.31. Merlyn Mind shall remain under the direct control of the Institution with respect to the use and maintenance of student “personally identifiable information” from “education records,” (each as defined in FERPA) and shall use and share student personally identifiable information, including Voice Audio, only for the limited purpose of providing the Merlyn Solution and the services.

Institution will be solely responsible for obtaining and maintaining Consents from Instructors, Participants, parents of Participants or any other persons, including with respect to Children’s Online Privacy Protection Act and its implementing rules or regulations (“COPPA”) if applicable.

In the event that an Institution or Enrolled Instructor operates a Symphony Classroom AI Hub where Participants under the age of 13 are present, the Institution agrees that it will be solely responsible for obtaining and maintaining any verifiable parental consent required by applicable law, including COPPA, prior to making the Merlyn Solution available to such students. Merlyn Mind shall fully comply with applicable requirements of COPPA in its provision of the services.

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

**A. Term.** The term of this Agreement begins on the Effective Date and expires on December 31, 2026, unless earlier terminated in accordance with this Agreement.

**B. Extension Agreement.** Following expiration or termination of this Agreement, the Institution may extend its access to, and Functionality of, the Merlyn Solution (including Symphony Classroom AI Hubs) governed by this Agreement by entering into an extension agreement with Merlyn Mind, which may be subject to additional or updated terms and fees.

**C. Right to Suspend Use.** Merlyn Mind may immediately suspend or terminate the availability of the Merlyn Solution and Merlyn Mind Materials (and any elements and features of them), in whole or in part, for any reason, in Merlyn Mind’s sole discretion, and without advance notice or liability in the event that (i) Merlyn Mind discontinues offering the Merlyn Solution and Merlyn Mind Materials to all customers in the applicable jurisdiction, (ii) the Institution’s continued use of the Merlyn Solution and Merlyn Mind Materials may result in a material data security or privacy risk or risk of non-compliance with applicable laws, or (iii) providing the Merlyn Solution, and/or providing interoperability of the Merlyn Solution with any given Third Party Solution, in accordance with this Agreement is reasonably likely to result in material business or legal harm to Merlyn Mind or is impracticable from a business or technical standpoint.

**D. Termination Prior to the End of Term Expiration.** In addition to any other express termination right set forth in this Agreement:

1. Institution may terminate this Agreement for any reason upon thirty (30) days' advance notice;
2. either party may terminate this Agreement, effective on written notice to the other party, if the other party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching party provides the breaching party with written notice of such breach;
3. either party may terminate this Agreement, effective immediately upon written notice to the other party, if the

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

4. either party may terminate this Agreement pursuant to Section 13 in accordance with its terms.

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

1. Functionality, services, support and maintenance of and access to the Merlyn Solution shall immediately cease, and the Merlyn Solution shall no longer be operable;
2. Institution shall immediately discontinue use of the Merlyn Solution, including Authorized Use;
3. Institution will not be entitled to any refund for any reason;
4. Institution is not obligated to return any Symphony Classroom AI Hub to Merlyn Mind; and
5. Merlyn Mind will delete the Institution's Registrations in the IT Administrator Portal and Instructor Enrollments in the Merlyn Instructor Portal and delete any associated Personal Information within 90 days of termination of this Agreement unless Merlyn Mind is required by applicable law or legal obligation to retain such information. In such case, Merlyn Mind will continue to treat Personal Information in accordance with its Privacy Policy and this Agreement until such time as the Personal Information is deleted.

**9. Third Party Solutions.**

**A.** The Merlyn Solution links to or integrates with certain Third Party Solutions as part of Full Functionality. Institution is solely responsible for determining the Third Party Solutions its Instructors will use with the Merlyn 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 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 activities of Institution Parties in connection with any Third Party Solutions are subject to the privacy and other policies, terms and conditions of use and/or sale, and rules issued by the operator of the relevant Third Party Solutions.

**10. Governing Applicable Law and Dispute Resolution.**

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

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

**C.** Before taking any other legal action regarding any claim that Institution may have in connection with this Agreement, Institution must first submit a complaint to [legal@merlyn.org](mailto:legal@merlyn.org) to enable Merlyn Mind to resolve the claim with Institution. If the parties fail to resolve the claim in this manner in a reasonable timetable, or if any other claim or dispute in



connection with these terms arises, it shall be resolved in the exclusive jurisdiction and venue as specified above. Merlyn Mind may seek injunctive or other equitable relief to protect its intellectual property rights in any court of competent jurisdiction at any time.

## **11. Disclaimer Of Representations And Warranties.**

**A.** The Documentation accompanying Symphony Classroom AI Hubs, Remotes and related accessories contains certain warranty provisions regarding such hardware, which set forth the warranty obligations of Merlyn Mind with respect thereto.

**B.** EXCEPTING THOSE EXPRESS WARRANTIES REGARDING SYMPHONY CLASSROOM AI HUBS, THE MERLYN SOLUTION IS PROVIDED ON AN “AS IS”, “AS AVAILABLE”, AND “WITH ALL FAULTS” BASIS. Therefore, to the fullest extent permissible by law, the Merlyn Parties hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, as to: (a) the Merlyn Solution (including the Merlyn Mind Materials and the Content); (b) the functions, features, or any other elements on, or made accessible through, the Merlyn Solution; (c) any Third Party Solutions or other products, services, or instructions offered or referenced at or linked through the Merlyn Solution; (d) security associated with the transmission of Content transmitted to Merlyn Mind or via the Merlyn Solution; (e) whether the Merlyn Solution or the servers that make the Merlyn Solution available are free from any harmful components; (f) whether the information (including any instructions) on the Merlyn 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 Merlyn Solution will be repaired or corrected; (h) whether access by any Institution Party to the Merlyn Solution will be uninterrupted; (i) whether the Merlyn Solution will be available at any particular time or location; and (j) whether use by any Institution Party of the Merlyn Solution is lawful in any particular jurisdiction.

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

**D.** THE MERLYN SOLUTION DOES NOT INCLUDE, AND MERLYN MIND ASSUMES NO RESPONSIBILITY FOR, ANY THIRD PARTY SOLUTION OR ITS OPERABILITY WITH THE MERLYN SOLUTION OR ITS USE IN CONJUNCTION WITH THE MERLYN SOLUTION OR ANY ELEMENT THEREOF.

**E.** 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 Mind’s Liability.**

**A.** Under no circumstances will the Merlyn Parties be responsible for personal injury or death or for any indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages that are directly or indirectly related to: (a) the Merlyn Solution (including the Merlyn Mind Materials and the Merlyn Content); (b) use of or inability to use the Merlyn Solution, or the performance of the Merlyn Solution; (c) any Content or Third Party Solutions, or their processing, integration or interoperability with the Merlyn Solution; (d) any action taken in connection with an investigation by Merlyn Parties or law enforcement authorities regarding your access to or use of the Merlyn Solution; (e) any errors or omissions in the Merlyn Solution’s technical operation; (f) failure by Institution to obtain or maintain necessary Consents or (g) any violation of this Agreement or applicable law by an Institution Party.

**B.** The above limitations of liability will apply even if any of these or circumstances were foreseeable and even if Merlyn 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 Solution). Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages of the sort that are described above, so the above

limitation or exclusion may not apply.

**C. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL MERLYN PARTIES' TOTAL LIABILITY HEREUNDER, FOR ALL POSSIBLE DAMAGES, LOSSES, AND CAUSES OF ACTION IN CONNECTION WITH ACCESS TO AND USE OF THE MERLYN SOLUTION AND YOUR RIGHTS UNDER THESE TERMS, EXCEED THE AMOUNT PAID BY INSTITUTION FOR THE MERLYN SOLUTION TO MERLYN MIND OR AN AUTHORIZED RESELLER (AS APPLICABLE) DURING THE TERM OF THIS AGREEMENT OR \$5,000 WHICHEVER AMOUNT IS GREATER.**

### **13. Agreement Changes.**

The parties hereby agree that in the event of a change in applicable law that materially conflicts with the rights or obligations of a party hereunder, the parties will negotiate, in good faith and in a diligent and timely manner, reasonable and equitable changes to this Agreement to the extent necessary to resolve such conflict. If the parties are unable to reach agreement on appropriate amendments, either party may terminate this Agreement and the parties will take any necessary or appropriate post-termination actions in accordance with Section 8(E) hereof.

### **14. Procedure For Alleging Copyright Infringement.**

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

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

**B.** DMCA Notices must be submitted to Merlyn Mind at 405 Lexington Avenue, Suite 3504, New York, NY 10174 or [legal@merlyn.org](mailto:legal@merlyn.org). Please note that there can be substantial legal penalties for false claims.

### **15. Indemnity.**

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

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

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

## **16. Institution Representations and Warranties.**

**A.** Institution represents and warrants to Merlyn Mind that at all times during the Term:

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

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

## **17. General Provisions.**

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

**B. Export Controls.** Software related to or made available by the Merlyn Solution may be subject to export controls of the U.S.A. No software from the Merlyn Solution may be downloaded, exported, or re-exported (i) into (or to a national or resident of) any country or other jurisdiction to which the U.S.A. has embargoed goods, software, technology or services (which, as of the effective date of this Agreement, includes Cuba, North Korea, Iran, Sudan, and Syria), or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders, or (iii) to anyone on the U.S. Department of Commerce's Bureau of Industry and Security Entities List as published in the Export Administration Regulations (including entities engaged in weapons of mass destruction proliferation in various

countries and persons and entities that are suspected of diverting U.S. origin items to embargoed countries or terrorist end-uses). Institution is responsible for complying with all trade regulations and laws both foreign and domestic. Except as authorized by law, Institution agrees and warrants not to export or re-export the software to any country, or to any person, entity, or end-user subject to U.S. export controls, including as set forth in subsections (i) – (iii) above.

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

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

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

**F. Investigations; Cooperation with Applicable Law Enforcement; Termination; Survival.** Merlyn Mind reserves the right, without any limitation, to: (i) investigate any suspected breaches of its Merlyn Solution security or its information technology networks, (ii) investigate any suspected breaches of this Agreement, (iii) involve and cooperate with law enforcement authorities in investigating any of the matters listed here, and (iv) prosecute violators of this Agreement. The provisions of this Agreement, which by their nature should survive suspension or termination of this Agreement will survive, including Sections 8, 10, 11, 12, 15, 16, and 17.

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

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

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the date last executed below.

**INSTITUTION**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**MERLYN MIND, INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_