



Data Sharing/Use Agreement

Between

Jefferson County Board of Education

And

Merlyn Mind, Inc.

This Data Sharing/Use Agreement ("Agreement") between the Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools ("JCPS"), and ***Merlyn Mind, Inc.***, a corporation organized under the laws of Delaware. ("Services Provider") describes the services to be provided to JCPS by Services Provider, and the means to be used by Services Provider to ensure the confidentiality and security of information and data exchanged between JCPS and Services Provider in connection with the provision of the services.

A. PERIOD OF THE AGREEMENT

This Agreement shall be effective as of September 14, 2022 and will terminate when the services contract referenced in Paragraph B.1. below terminates, unless terminated earlier by either party pursuant to Section H.

B. SCOPE OF THE AGREEMENT AND INTENDED USE OF THE DATA

1. Services Provider will provide the following services to JCPS. JCPS is purchasing licenses for Symphony Classroom through a Professional Services Contract with Prosys Information Systems dated September 14, 2022. Merlyn Mind's Symphony Classroom solution combines hardware, AI services, and software to support teachers in their classrooms. The Symphony Classroom AI Hub is the central classroom device through which a digital assistant called Merlyn provides teachers with the ability to open and operate applications (like web browsing and presentations) and use other classroom technology (like laptops and monitors/smart boards) without being in front of their computer. Subject to the terms of Merlyn Mind's Customer Agreement (Appendix B), the services include the receipt and processing by the Symphony Classroom AI Hub of voice audio (locally or in the cloud) to allow teachers to perform such functionality using oral commands. In the event of a conflict between the terms of the Customer Agreement and the terms of this Data Sharing Agreement, the terms of this Data Sharing Agreement shall prevail.
2. JCPS agrees that Services Provider is an organization to which JCPS can disclose, personally identifiable information from an education record of a student, as defined in 34 CFR 99.3 ("Student PII"), under the "school official exception" of the Family

("FERPA"), because the disclosure is to a contractor to whom JCPS has outsourced institutional services or functions for which JCPS would otherwise use employees; the Services Provider agrees that it is under the direct control of JCPS with respect to the use and maintenance of "education records" (as the term is defined in FERPA); and the Services Provider is subject to the applicable requirements of 34 CFR 99.33(a) governing the use and redisclosure of Student PII. .

3. JCPS shall disclose to Services Provider, confidential, personally identifiable information from an education record of a student, as defined in 34 C.F.R. 99.3 (Student PII), under the "school official exception" of FERPA, 34 C.F.R. 99.31 (a)(1), when the disclosure is within such exception as stated in Paragraph B.2 above and Services Provider has a legitimate educational interest for access to such education records. The Student PII and other JCPS confidential data, to be disclosed ("Confidential Data") is described in a document attached to this agreement as **Attachment A**. Services Provider shall use Student PII from education records and Confidential Data in order to perform the services described in Paragraph B.1 above. Services Provider shall notify JCPS and JCPS shall provide written consent, if approved, of any changes to the list of Confidential Data necessary for the services or any changes to the scope, purpose or duration of the services themselves. Any agreed upon changes to the Confidential Data disclosed shall be reduced to writing and included in an update to Attachment A to this Agreement. Any agreed upon changes to the scope, purpose or duration of the services shall be reduced to writing and included in an amendment to the services contract described in Paragraph B.1 above.
4. As necessary, Services Provider and JCPS shall work cooperatively to determine the proper medium and method for the transfer of Confidential Data between each other, consistent with the services. The same protocol shall apply to any transfer of Confidential Data from Services Provider to JCPS.

C. CONSTRAINTS ON USE OF DATA

1. Services Provider agrees that the services shall be provided in a manner that does not permit personal identification of parents and students by individuals other than representatives of Services Provider that have legitimate interests in the information.
2. Services Provider will not contact the JCPS individuals included in the data sets received in connection with the services for a commercial purpose without obtaining advance written authorization from JCPS. For avoidance of doubt, Services Provider is permitted to communicate with JCPS users for purposes of providing the services, including to provide support and to administer the services, in accordance with the terms of the Agreement.
3. Except as required by applicable law, Services Provider shall not re-disclose any Student PII to any other third-party requesting individuals, agencies, or organizations without prior written authorization by JCPS. For the avoidance of doubt, Services Provider is permitted to re-disclose any Student PII to its third parties for purposes of

providing the services, including to provide support and to administer the services, in accordance with the terms of this Agreement. All third parties with access to Student PII shall be subject to contractual agreements with Services Provider with applicable terms consistent with this Agreement.

4. Services Provider shall use the Confidential Data only to provide the services as described in Paragraph B.1 above. The Confidential Data shall not be used for personal gain or profit. For the avoidance of doubt, the provision of services to JCPS shall not be considered a use for personal gain or profit.

D. DATA CONFIDENTIALITY AND DATA SECURITY

Services Provider agrees to the following confidentiality and data security statements:

1. Services Provider acknowledges that the Confidential Data is confidential data and proprietary to JCPS, and agrees to protect the Confidential Data from unauthorized disclosures and to comply with all applicable Local, State and Federal confidentiality laws and regulations including but not limited to, as applicable, FERPA; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq.; the Child Nutrition Act of 1966, 42 U.S.C. 1771 et seq.; 7 C.F.R. 245.6 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931 et seq.; and the Kentucky Open Records Act, KRS 61.820 et seq.
2. If the performance of this Agreement involves the transfer by JCPS to Services Provider of any Confidential Data regarding any JCPS student that is subject to FERPA, Services Provider agrees to:
 - a. In all respects comply with the applicable provisions of FERPA.
 - b. Use any such Confidential Data for no purpose other than to fulfill the purposes of the services contract, as further described in Paragraph B.1 above, and not share any such Confidential Data with any person or entity other than Services Provider and its employees, contractors, sub-contractors, and agents, without the prior written approval of JCPS unless otherwise required by applicable law.
 - c. Require all employees, contractors and agents of Services Provider to comply with all applicable provisions of FERPA with respect to any such Confidential Data.
 - d. Maintain any such Confidential Data in a secure environment, and not copy, reproduce or transmit any such Confidential Data except as necessary to fulfill the purposes of the services contract as further described in Paragraph B.1 above or as otherwise required by applicable law.

- e. Provide the services under the services contract as further described in Paragraph B.1 above in a manner that does not permit the identification of an individual student by anyone other than employees, contractors, subcontractors, or agents of Services Provider having a legitimate interest in knowing such personal identification.
 - f. Destroy or return to JCPS any such Confidential Data obtained under this Agreement within ninety (90) days of termination of this Agreement or within thirty (30) days of receipt of written request from JCPS.
- 3. Except as permitted in this Agreement, Services Provider shall not release or otherwise reveal, directly or indirectly, the Confidential Data to any individual, agency, entity, or third party not included in this Agreement, unless such disclosure is required by law or court order. If Services Provider becomes legally compelled to disclose any confidential and otherwise personally identifiable data of JCPS (whether by judicial or administrative order, applicable law, rule or regulation, or otherwise), then, unless legally prohibited from doing so, Services Provider shall use commercially reasonable efforts to provide JCPS with prior notice before disclosure so that JCPS may seek a protective order or other appropriate remedy to prevent the disclosure or to ensure JCPS's compliance with the confidentiality requirements of federal or state law; provided, however, that Services Provider will use commercially reasonable efforts to maintain the confidentiality of Confidential Data. If a protective order or other remedy is not obtained prior to the deadline by which any legally compelled disclosure is required, Services Provider will only disclose that portion of the Confidential Data that Services Provider is legally required to disclose.
- 4. Services Provider shall not distribute, reprint, alter, sell, assign, edit, modify or create derivative works or any ancillary materials from or with the Confidential Data. For the avoidance of doubt, the provision of services to JCPS shall not be a violation of the restrictions in this section.
- 5. Services Provider shall not use Confidential Data shared under this Agreement for any purpose other than the services contract as further described in Paragraph B.1 above. Nothing in this Agreement shall be construed to authorize Services Provider to have access to, and JCPS shall not provide to Services Provider, additional Confidential Data from JCPS that is not included in the scope of this Agreement (or addenda) unless expressly agreed to in writing by the parties. Services Provider understands that this Agreement does not convey ownership of the Confidential Data to Services Provider.
- 6. Services Provider shall take reasonable security precautions and protections to ensure that persons not authorized to view the Confidential Data do not gain access to the data. Reasonable security precautions and protections include, but are not limited to, as applicable:

- a. Creating, distributing, and implementing data governance policies and procedures which protect customer data through appropriate administrative, technical and physical security safeguards, and outline staff responsibilities for maintaining data security;
 - b. Encrypting all Confidential Data stored on mobile computers/devices;
 - c. Encrypting Confidential Data before it is transmitted electronically;
 - d. Requiring that users be uniquely identified and authenticated before accessing Confidential Data;
 - e. Establishing and enforcing well-defined Confidential Data privilege rights which restrict users' access to the data necessary to perform their job functions;
 - f. Ensuring that all staff accessing Confidential Data sign a nondisclosure statement, attached as Attachment B, and maintain copies of signed statements;
 - g. Securing access to any physical areas/electronic devices where Confidential Data are stored;
 - h. Implementing a firewall to permit or deny network transmissions based upon a set of rules; and
 - i. Installing anti-virus software to protect the network.
7. If Services Provider receives Personal Information as defined by and in accordance with the Kentucky Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq. (the "Act"), Services Provider shall secure, protect and maintain the confidentiality of the Personal Information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in the Act, including but not limited to the following, as applicable:
- a. "Personal Information" is defined in accordance with KRS 61.931(6) as an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:
 - i. An account, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
 - ii. A Social Security number;

- iii. A taxpayer identification number that incorporates a Social Security number;
 - iv. A driver's license number, state identification card number or other individual identification number issued by an agency;
 - v. A passport number or other identification number issued by the United States government; or
 - vi. Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by FERPA.
- b. As provided in KRS 61.931(5), a "non-affiliated third party" means any person or entity that has a contract or agreement with an agency and receives (accesses, collects or maintains) "personal information" (as defined by the Act) from the agency pursuant to the contract or agreement.
 - c. Services Provider shall not re-disclose, without the written consent of JCPS, any "personal information," as defined in KRS 61.931, or any other personally identifiable information of a student or other JCPS persons, such as employees.
 - d. As applicable, Services Provider agrees to reasonably cooperate with JCPS in complying with the response, mitigation, correction, investigation, and notification requirements of the Act in relation to a security breach impacting JCPS' Personal Information in Services Provider's custody.
 - e. As applicable, Services Provider agrees to undertake a prompt and reasonable investigation of any breach impacting JCPS' Personal Information in Services Provider's custody as required by KRS 61.933.
8. If Services Provider is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person other than an educational institution that operates a cloud computing service"), Services Provider agrees that:
- a. Services Provider shall not process JCPS student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the provider receives express permission from the student's parent. Services Provider shall work with the student's school and district to determine the best method of collecting parental permission, consistent with Services Provider's existing services, as applicable. KRS 365.734 defines "process" and "student data" for the purpose of this section 8.

- b. Pursuant to KRS 365.734(2), Services Provider shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
 - c. Pursuant to KRS 365.734(2), Services Provider shall not sell, disclose, or otherwise process student data for any commercial purpose. For the avoidance of doubt, the provision of services to JCPS shall not be a violation of this section.
 - d. Pursuant to KRS 365.734(3), Services Provider shall certify in writing to the agency that it will comply with KRS 365.734(2), as applicable.
- 9. Services Provider shall report all known breaches of the Confidential Data, in any format, to Services Provider's business contact of record at JCPS. The report shall include (1) the name, job title, and contact information of the person reporting the incident;; (2) the date and time the incident was discovered. To the extent known at the time, and to the extent that sharing such information will not compromise any law enforcement investigation, the report shall also include: (1) the nature of the incident (e.g. system level electronic breach, an electronic breach of one computer or device, a breach of hard copies of records, etc.); (2) a description of the Confidential Data lost or compromised; (3) a description of the storage medium from which Confidential Data was lost or compromised, if applicable; (5) a summary of the relevant controls in place to prevent unauthorized use of the lost or compromised Confidential Data; (6) the number of JCPS individuals potentially affected; and (7) whether law enforcement was contacted.
- 10. Services Provider shall securely and permanently destroy the Confidential Data, and any and all hard and soft (electronic) copies thereof, by no later than 90 days after the termination of this Agreement or within 30 days of receipt of written request from JCPS. Services Provider agrees to require all employees, contractors, or agents of any kind using JCPS Confidential Data to comply with this provision. Services Provider agrees to document the methods used to destroy the Confidential Data, and upon request, provide confirmation to JCPS that the Confidential Data has been destroyed.
- 11. Nothing in this Agreement prevents Services Provider from using, retaining, and maintaining aggregated, deidentified student data for legally permissible purposes. For the purpose of this Agreement, aggregated, deidentified data is not considered to be Confidential Data.
- 12. For purposes of this agreement and ensuring Services Provider's compliance with the terms of this Agreement and all applicable state and Federal laws, Services Provider designates Mr. Sharad Sundararajan (or an alternative designee specified in writing) as the temporary custodian ("Temporary Custodian") of the Confidential Data that JCPS shares with Services Provider, who shall be JCPS' point of contact for information security questions. JCPS will release all Confidential Data and

information under this Agreement to Services Provider. As applicable, Services Provider shall be responsible for transmitting all Confidential Data requests and maintain a log or other record of all Confidential Data requested and received pursuant to this Agreement, including confirmation of the return or destruction of the Confidential Data in response to written request from JCPS and in accordance with Section H below. JCPS may, upon reasonable request, review the relevant records Services Provider is required to keep under this Agreement with respect to JCPS Confidential Data.

13. Services Provider acknowledges that any violation of this Agreement and/or the provisions of FERPA or accompanying applicable regulations related to the nondisclosure of Confidential Data constitutes just cause for JCPS to immediately terminate this Agreement.
14. Services Provider shall maintain, within ninety (90) days of the Effective Date and for the remainder of the term of this Agreement, a cyber-insurance liability policy, in the amount of \$5M. Upon request, Services Provider shall furnish the certificate of insurance or other relevant information evidencing this coverage. The certificate of insurance shall name the Board of Education of Jefferson County as additional insured in the Description of Operations section of the Certificate of Insurance which shall read:

Board of Education of Jefferson County
Attn: Insurance/Real Estate Dept.
3332 Newburg Road
Louisville, Kentucky 40218
15. Services provider shall maintain, during the term of this Agreement, ISO27001 or SOC2 certification. If Services Provider is unable to provide ISO27001 or SOC2 certification, minimum requirements on a JCPS-provided standardized questionnaire must be met. Upon request, Services Provider shall furnish a current ISO27001, SOC2 certification, or updated questionnaire.

E. FINANCIAL COSTS OF DATA-SHARING

No payments will be made under this Agreement by either party. Any payments to Services Provider will be made under the services contract described in Paragraph B.1 above.

F. OBLIGATIONS OF JCPS

During the term of this Agreement, JCPS shall:

1. Prepare and deliver the Confidential Data described in **Attachment A**.

G. LIABILITY

Services Provider agrees to be responsible for and assumes all liability for any claims, costs, damages or expenses (including reasonable attorneys' fees) that may arise from or relate to Services Provider's intentional or grossly negligent unauthorized release of personally identifiable student, parent or staff data ("Claim" or "Claims"). Services Provider agrees to hold harmless JCPS and pay any reasonable costs incurred by JCPS in connection with any Claim. The provisions of this Section shall survive the termination or expiration of this Agreement.

H. TERMINATION

1. This Agreement may be terminated as follows, after notification via the United States Postal Service (certified mail or registered mail) or recognized overnight delivery service (e.g., UPS, DHL, or FedEx):
 - a. By either party in the event of a material breach of this Agreement by another party provided however, the breaching party shall have thirty (30) days to cure such breach and this Agreement shall remain in force.
 - b. By either party after thirty (30) days advance written notice to the other party, for any reason or no reason.
2. The confidentiality provisions of this Agreement shall survive the termination of this Agreement. If this Agreement is terminated by either party for material breach within seven (7) days of the termination the Confidential Data shall be returned or destroyed within seven (7) days of the termination and the Services Provider shall provide JCPS confirmation of the return or destruction of the data pursuant to Paragraph D.12. If this Agreement terminates at the end of the term described in Section A, Services Provider shall return or destroy all Confidential Data and the Services Provider shall provide JCPS confirmation of the return or destruction of the Confidential Data pursuant to Paragraph D 12. .
3. Destruction of the Confidential Data shall be accomplished by utilizing an industry-standard method of confidential destruction, which may include, but is not limited to, shredding, burning or certified/witnessed destruction for physical materials and verified erasure of magnetic media using industry standard methods of electronic file destruction.

I. PUBLICATIONS AND COPYRIGHTS

Both parties recognize that each organization may have extant work that predates this agreement. If those materials and/or data are used in the course of this work, they remain the property of the original developer. If new materials are developed during the term of the services contract described in Paragraph B.1 above, ownership and copyright of such will be governed by the terms of the services contract.

J. MODIFICATION

No waiver, alteration or modification of the provisions of this Agreement shall be binding unless in writing and mutually agreed upon. Any modifications or additions to this Agreement must be negotiated and approved by both parties.

K. QUALITY OF SERVICES

Upon request, JCPS reserves the right to review Services Provider's performance under this Agreement for effectiveness in serving the specific purposes as further outlined in Paragraph B.1. Failure of Services Provider to perform in a manner that meets or exceeds the quality standards for JCPS shall serve as grounds for termination of this Agreement, subject to Service Provider's right to cure under Section H.1.a. of this Agreement.

L. BREACH OF DATA CONFIDENTIALITY

Services Provider acknowledges that the breach of this agreement or its part may result in irreparable and continuing damage to JCPS for which money damages may not provide adequate relief. In the event of a breach or threatened breach of this agreement by Services Provider, JCPS, in addition to any other rights and remedies available to JCPS at law or in equity, may be entitled to preliminary and permanent injunctions to enjoin and restrain the breach or threatened breach. If the United States Department of Education's Family Policy Compliance Office determines that Services Provider has violated paragraph 34 C.F.R. 99.31(a)(6)(iii)(B), JCPS may not allow Services Provider access to personally identifiable information from its education records for at least five (5) years.

M. CHOICE OF LAW AND FORUM

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Any action or Claim arising from, under or pursuant to this Agreement shall be brought in the Jefferson County, Kentucky, Circuit Court, and the parties expressly waive the right to bring any legal action or Claims in any other courts.

N. WAIVER

No delay or omission by either party in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement.

O. SEVERABILITY

If any part of this Agreement is held to be void, against public policy or illegal, the balance remaining provisions of this Agreement shall continue to be valid and binding.

P. NOTICES

Any notices or reports by one party to the other party under this Agreement shall be made in writing, to the address shown in the signature portions of this Agreement, or to such

other address as may be designated in writing by one party to the other. Notices shall be effective when received if personally delivered, or three days after mailing if mailed.

Q. RELATIONSHIP OF PARTIES

JCPS is not an employee, agent, partner or co-venturer of or with Services Provider. Neither Services Provider nor JCPS shall represent or imply to any party that it has the power or authority to enter into a contract or commitment in the name of or on behalf of the other, or to otherwise bind the other.

R. ENTIRE AGREEMENT; ASSIGNMENT

This Agreement, together with the services contract and any attachments hereto, and any amendment or modifications that may hereafter be agreed to, constitute the entire understanding between the parties with respect to the subject-matter hereof and supersede any and all prior understandings and agreements, oral and written, relating hereto. Services Provider shall not assign this Agreement or any portion thereof to a subcontractor or other third party without the prior written consent of JCPS, and any attempted assignment without such prior written consent in violation of this Section R shall automatically terminate this Agreement.

AGREED:

Merlyn Mind, Inc. 8 West 40th Street, 20th Floor
New York, NY. 10018-2235

DocuSigned by:
Charles Prestia
BY: A4961E5E515042E...

Name: **Charlie Prestia**

Title: **VP, Sales**

8/31/2022

Date: _____

AGREED:

Jefferson County Board of Education
3332 Newburg Road
Louisville KY 40218

BY: _____

Name: Martin A. Pollio, Ed. D.,

Title: Superintendent

Date: _____

Attachment A**CONFIDENTIAL INFORMATION TO BE DISCLOSED**

Category of Data	Elements	Check if Used by Your System
Application Technology Meta Data	IP Addresses of users, Use of cookies, etc.	✓
	<p>Other application technology meta data Please specify: Symphony Classroom Solution may access and collect usage information, which may include</p> <ul style="list-style-type: none"> • information from a teacher's or IT administrator's device or browser, • or from other devices in the classroom (such as an interactive flat panel display or a document projector) that connect with the Symphony Classroom Solution, • or information about users' interactions with the Symphony Classroom Solution, including... <ul style="list-style-type: none"> ○ the quality of the audio processed by the Symphony Classroom Solution and ○ the commands provided, which may include the type and number of requests made of the Symphony Classroom Solution, browsing history, clickstream patterns, location, and websites stored in the bookmarks or similar section of the browser when interacting with the Symphony Classroom Solution. <p>For more details, please see our Symphony Classroom privacy policy, which can be found at https://www.merlyn.org/terms/privacy-policy.</p>	✓
Application Use Statistics	Meta data on user interaction with application	✓
Assessment	Standardized test scores	

	Observation data	
	Other assessment data-Please specify:	
Attendance	Student school (daily) attendance data	
	Student class attendance data	
Communications	Online communications captured (emails, blog entries)	
Conduct	Conduct or behavioral data	
Demographics	Date of Birth	
	Place of Birth	
	Gender	
	Ethnicity or race	
	Language information (native, or primary language spoken by student)	
	Student disability information	

Category of Data	Elements	Check if Used by Your System
	Other demographic information-Please specify:	
Enrollment	Student school enrollment	
	Student grade level	
	Homeroom	
	Guidance counselor	
	Specific curriculum programs	
	Year of graduation	
	Other enrollment information-Please specify:	
Parent/Guardian Contact Information	Address	
	Email	
	Phone	
Parent/Guardian ID	Parent ID number (created to link parents to students)	
Parent/Guardian Name	First and/or Last	
Schedule	Student scheduled courses	
	Teacher names	

Special Indicator	English language Learner information	
	Low income status	
	Medical alerts/ health data	

Category of Data	Elements	Check if Used by Your System
	Specialized education services (IEP or 504)	
	Living situations (homeless/foster care)	
	Other indicator information-Please specify:	
Staff Data	First and Last Name	✓
	Email Address	✓
	Staff ID number	
	<p>Other information – Please specify Other staff data we may collect includes:</p> <ul style="list-style-type: none"> - Address (of the school district) - Job title - Phone number (at the school) <p>For more details, please see our Symphony Classroom privacy policy, which can be found at https://www.merlyn.org/terms/privacy-policy.</p>	✓
Student Contact Information	Address	
	Email	
	Phone	
Student Identifiers	Local (School district) ID number	

	State ID number	
	Provider/App assigned student ID number	
	Student app username	
	Student app passwords	
Student Name	First and/or Last	
Student In App Performance	Program/application performance (typing program- student types 60 wpm, reading program- student reads below grade level)	
Student Program Membership	Academic or extracurricular activities a student may belong to or participate in	
Student Survey Responses	Student responses to surveys or questionnaires	
Student work	Student generated content; writing, pictures, etc.	

Category of Data	Elements	Check if Used by Your System
	Other student work data -Please specify:	
Transcript	Student course grades	
	Student course data	
	Student course grades/ performance scores	
	Other transcript data - Please specify:	
Transportation	Student bus assignment	
	Student pick up and/or drop off location	
	Student bus card ID number	
	Other transportation data – Please specify:	
Other	<p>Please list each additional data element used, stored, or collected by your application:</p> <p>Voice Audio, which is the spoken or audible speech, utterances, phrases, and sounds from or by a natural person within range of the Symphony Classroom Solution. For more details, please see our Symphony Classroom privacy policy, which can be found at https://www.merlyn.org/terms/privacy-policy.</p>	✓

None	No Confidential Data collected at this time. Provider will immediately notify JCPS if this designation is no longer applicable.	
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Attachment B

MERLYN MIND, INC.

EMPLOYEE INVENTIONS AND PROPRIETARY INFORMATION AGREEMENT

The following agreement (the "Agreement") between Merlyn Mind, Inc., a Delaware corporation (the "Company"), and the individual identified on the signature page to this Agreement ("Employee" or "I") is effective as of the first day of Employee's employment by the Company and confirms and memorializes the agreement that (regardless of the execution date hereof) the Company and I have had since the commencement of my employment (which term, for purposes of this Agreement, shall be deemed to include any relationship of service to the Company that I may have had prior to actually becoming an employee). I acknowledge that this Agreement is a material part of the consideration for my employment or continued employment by the Company. In exchange for the foregoing and for other good and valuable consideration, including my access to and use of the Company's Inventions (defined below) and Proprietary Information (defined below) for performance of my employment, training and/or receipt of certain other valuable consideration, the parties agree as follows:

1. **No Conflicts.** I have not made, and agree not to make, any agreement, oral or written, that is in conflict with this Agreement or my employment with the Company. I will not violate any agreement with, or the rights of, any third party. When acting within the scope of my employment (or otherwise on behalf of the Company), I will not use or disclose my own or any third party's confidential information or intellectual property (collectively, "Restricted Materials"), except as expressly authorized by the Company in writing. Further, I have not retained anything containing or reflecting any confidential information or intellectual property of a prior employer or other third party, whether or not created by me.

thereof, whether or not it may be patented, copyrighted, trademarked or otherwise protected.
2. **Inventions.**
 - a. **Definitions.** "Company Interest" means any of the Company's current and anticipated business, research and development, as well as any product, service, other Invention or Intellectual Property Rights (defined below) that is sold, leased, used, licensed, provided, proposed, under consideration or under development by the Company. "Intellectual Property Rights" means any and all patent rights, copyright rights, trademark rights, mask work rights, trade secret rights, *sui generis* database rights and all other intellectual and industrial property rights of any sort throughout the world (including any application therefor and any rights to apply therefor, as well as all rights to pursue remedies for infringement or violation thereof). "Invention" means any idea, concept, discovery, learning, invention, development, research, technology, work of authorship, trade secret, software, firmware, content, audio-visual material, tool, process, technique, know-how, data, plan, device, apparatus, specification, design, prototype, circuit, layout, mask work, algorithm, program, code, documentation or other material or information, tangible or intangible, and all versions, modifications, enhancements and derivative works thereof, whether or not it may be patented, copyrighted, trademarked or otherwise protected.
 - b. **Assignment.** The Company shall own, and I hereby assign and agree to assign, all right, title and interest in and to all Inventions (including all Intellectual Property Rights therein, related thereto or embodied therein) that are collected, made, conceived, developed, reduced to practice or set out in any tangible medium of expression or otherwise created, in whole or in part (collectively, "Created"), by me during the term of my employment with the Company that either (i) arise out of any use of the Company's facilities, equipment, Proprietary Information or other assets (collectively, "Company Assets") or any research or other activity conducted by, for or under the direction of the Company (whether or not conducted (A) at the Company's facilities; (B) during working hours or (C) using Company Assets), or (ii) are useful with or in or relate directly or indirectly to any Company Interest. I will promptly disclose and provide all of the foregoing Inventions (the "Assigned Inventions") to the Company. However, the foregoing does not purport to assign to the Company (and Assigned Inventions shall not include) any Invention that: (1) by law (including, without limitation, the applicable statutory provision for my state of employment set forth in Appendix A, if any) I cannot be required to so assign; or (2) otherwise meets all of the following requirements: (I) the Invention is Created entirely on my own time; (II) the Invention is Created entirely without use of any Company Assets and (III) the Invention is not useful with or related to any Company Interest. Nevertheless, if I believe any Invention Created by me during the term of my employment is not within the definition of Assigned Inventions, I will nevertheless disclose it to the Company so that the Company may make its assessment.

c. **Assurances.** I hereby make and agree to make all assignments to the Company necessary to effectuate and accomplish the Company's ownership in and to all Assigned Inventions. I will further assist the Company, at its expense, to evidence, record and perfect such assignments, and to perfect, obtain, maintain, enforce and defend any rights specified to be so owned or assigned. I hereby irrevocably designate and appoint the Company and its officers as my agents and attorneys-in-fact, coupled with an interest, to act for and on my behalf to execute and file any document and to perform all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by me.

d. **Other Inventions.** If (i) I use or disclose any Restricted Materials when acting within the scope of my employment (or otherwise to or on behalf of the Company) or (ii) any Assigned Invention cannot be fully made, used, reproduced, sold, distributed, modified, commercialized or otherwise exploited (collectively, "Exploited") without using, misappropriating, infringing or violating any Restricted Materials, I hereby grant and agree to grant to the Company a perpetual, irrevocable, worldwide, fully paid-up, royalty-free, non-exclusive, assignable, transferable, sublicensable right and license to use, disclose, fully Exploit and exercise all rights in such Restricted Materials and all Intellectual Property Rights embodied therein or related thereto. I will not use or disclose any Restricted Materials for which I am not fully authorized to grant the foregoing license.

e. **Moral Rights.** To the extent allowed by applicable law, the terms of this Section 2 include all rights of paternity, integrity, disclosure, withdrawal and any other rights that may be known or referred to as moral rights, artist's rights, droit moral or the like (collectively, "Moral Rights"). To the extent I retain any such Moral Rights under applicable law, I hereby ratify and consent to any action that may be taken with respect to such Moral Rights by or authorized by the Company, and agree not to assert any Moral Rights with respect thereto. I will confirm any such ratification, consent or agreement from time to time as requested by the Company. Furthermore, I agree that notwithstanding any rights of publicity, privacy or otherwise (whether or not statutory) anywhere in the world and without any further compensation, the Company may and is hereby authorized to use my name, likeness and voice in connection with promotion of its business, products and services, and to allow others to do the same.

3. **Proprietary Information.**

a. **Definition; Restrictions on Use.** I agree that all Assigned Inventions (and all other financial, business, legal and technical information regarding or relevant to any Company Interest that is not generally publicly known), including the identity of and any other information relating to the Company's employees, Affiliates and Business Partners (as such terms are defined below), that I develop, learn or

obtain during my employment or that are received by or for the Company in confidence, constitute "Proprietary Information." I will hold in strict confidence and not directly or indirectly disclose or use any Proprietary Information, except as required within the scope of my employment. My obligation of nondisclosure and nonuse of Proprietary Information under this Section shall continue until I can document that it is or becomes readily generally available to the public without restriction through no fault of mine (understanding that breach of this Agreement would be such a fault) or, if a court requires a shorter duration, then the maximum time allowable by law will control. Furthermore, I understand that this Agreement does not affect my immunity under 18 USC Sections 1833(b) (1) or (2), which read as follows:

- (1) An individual shall not be held criminally or civilly liable under any federal or state trade secret law for the disclosure of a trade secret that (A) is made (i) in confidence to a federal, state, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
- (2) An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

b. **Upon Termination.** Upon termination of my employment (for any or no reason, whether voluntary or involuntary), I will promptly identify and, as directed by the Company, destroy, delete or return to the Company all items containing or embodying Proprietary Information (including all original or copies of content, whether in electronic or hard-copy form), except that I may keep my personal copies of (i) my compensation records; (ii) materials distributed to shareholders generally and (iii) this Agreement.

c. **Company Systems.** I also recognize and agree that I have no expectation of privacy with respect to the Company's networks, telecommunications systems or information processing systems (including, without limitation, stored computer files, email messages and voicemail messages or other devices (including personal devices)) in which Company Proprietary Information resides, is stored or is passed through (collectively, "Company Systems"), and in order to ensure compliance with work rules and safety concerns, the Company or its agents may monitor, at any time and without further notice to me, any Company Systems and any of my activity, files or messages on or using any

Company Systems, regardless of whether such activity occurs on equipment owned by me or the Company. I further agree that any property situated on the Company's premises and owned, leased or otherwise possessed by the Company, including computers, computer files, email, voicemail, storage media, filing cabinets or other work areas, is subject to inspection by Company personnel at any time with or without notice. I understand and acknowledge that (A) any such searches or monitoring efforts are not formal accusations of wrongdoing but rather part of the procedure of an investigation and (B) refusal to consent to such a search may be grounds for discipline.

4. **Restricted Activities.** For the purposes of this Section 4, the term "the Company" includes the Company and all other persons or entities that control, are controlled by or are under common control with the Company ("Affiliates") and for whom Employee performed responsibilities or about whom Employee has Proprietary Information.

a. **Definitions.** "Competitive Activities" means any direct or indirect non-Company activity (i) that is the same or substantially similar to Employee's responsibilities for the Company that relates to, is substantially similar to, or competes with the Company (or its demonstrably planned interests) at the time of Employee's termination from the Company; or (ii) involving the use or disclosure, or the likelihood of the use or disclosure, of Proprietary Information. Competitive Activities do not include being a holder of less than one percent (1%) of the outstanding equity of a public company. "Business Partner" means any past (*i.e.*, within the twelve (12) months preceding Employee's termination from the Company), present or prospective (*i.e.*, actively pursued by the Company within the twelve (12) months preceding Employee's termination from the Company) customer, vendor, supplier, distributor or other business partner of the Company with whom Employee comes into contact during Employee's employment with the Company or about whom Employee had knowledge by reason of Employee's relationship with the Company or because of Employee's access to Proprietary Information. "Cause" means to recruit, employ, retain or otherwise solicit, induce or influence, or to attempt to do so (provided that if I am a resident of California, "Cause" means to recruit, or otherwise solicit, induce or influence, or to attempt to do so). "Solicit", with respect to Business Partners, means to (A) service, take orders from or solicit the business or patronage of any Business Partner for Employee or any other person or entity, (B) divert, entice or otherwise take away from the Company the business or patronage of any Business Partner, or to attempt to do so, or (C) solicit, induce or encourage any Business Partner to terminate or reduce its relationship with the Company.

b. **Acknowledgments.**

i. I acknowledge and agree that (A) the Company's business is highly competitive; (B) secrecy of the Proprietary Information is of the utmost importance to the Company, and I will learn and use Proprietary Information in the course of performing my work for the Company and (C) my position may require me to establish goodwill with Business Partners and employees on behalf of the Company and such goodwill is extremely important to the Company's success, and the Company has made substantial investments to develop its business interests and goodwill.

ii. I agree that the limitations as to time, geographical area and scope of activity to be restrained in this Section 4 are coextensive with the Company's footprint and my performance of responsibilities for the Company and are therefore reasonable and not greater than necessary to protect the goodwill or other business interests of the Company. I further agree that such investments are worthy of protection and that the Company's need for protection afforded by this Section 4 is greater than any hardship I may experience by complying with its terms.

iii. I acknowledge that my violation or attempted violation of the agreements in this Section 4 will cause irreparable damage to the Company or its Affiliates, and I therefore agree that the Company shall be entitled as a matter of right to an injunction out of any court of competent jurisdiction, restraining any violation or further violation of such agreements by me or others acting on my behalf. The Company's right to injunctive relief shall be cumulative and in addition to any other remedies provided by law or equity.

iv. Although the parties believe that the limitations as to time, geographical area and scope of activity contained herein are reasonable and do not impose a greater restraint than necessary to protect the goodwill or other business interests of the Company, if it is judicially determined otherwise, the limitations shall be reformed to the extent necessary to make them reasonable and not to impose a restraint that is greater than necessary to protect the goodwill or other business interests of the Company.

v. In any such case, the Company and I agree that the remaining provisions of this Section 4 shall be valid and binding as though any invalid or unenforceable provision had not been included.

c. **As an Employee.** During my employment with the Company, I will not directly or indirectly: (i) Cause any person to cease or reduce their services (as an employee or otherwise) to the Company (other than terminating subordinate employees in the course of my duties for the

Company); (ii) Solicit any Business Partner; (iii) act in any capacity in or with respect to any commercial activity which competes, or is reasonably likely to compete, with any business that the Company conducts, proposes to conduct or demonstrably anticipates conducting, at any time during my employment with the Company or (iv) enter into in an employment, consulting or other similar relationship with another person or entity that requires a significant time commitment without the prior written consent of the Company.

d. **After Termination.** Unless I am a resident of California, for the period of twelve (12) months immediately following my termination of employment with the Company (for any or no reason, whether voluntary or involuntary), I will not directly or indirectly: (i) Cause any person to cease or reduce their services (as an employee or otherwise) to the Company; (ii) Solicit any Business Partner; or (iii) engage in any Competitive Activities (A) anywhere the Company offers its services or has customers during my employment with the Company or where my use or disclosure of Proprietary Information could materially disadvantage the Company regardless of my physical location; or (B) anywhere the Company offers its services or has customers and where I have responsibility for the Company; or (C) anywhere within a fifty (50) mile radius of any physical location I work for the Company. The foregoing timeframes shall be increased by the period of time beginning from the commencement of any violation of the foregoing provisions until such time as I have cured such violation.

5. **Employment at Will.** I agree that this Agreement is not an employment contract for any particular term. I have the right to resign and the Company has the right to terminate my employment at will, at any time, for any or no reason, with or without cause. This Agreement does not purport to set forth all of the terms and conditions of my employment, and as an employee of the Company, I have obligations to the Company which are not described in this Agreement. However, the terms of this Agreement govern over any such terms that are inconsistent with this Agreement, and supersede the terms of any similar form that I may have previously signed. This Agreement can only be changed by a subsequent written agreement signed by the Chief Executive Officer or President of the Company, or an officer designee authorized in writing by the foregoing or the Company's Board of Directors.

6. **Protected Activity Not Prohibited.** I understand that nothing in this Agreement limits or prohibits me from filing a charge or complaint with, or otherwise communicating or cooperating with or participating in any investigation or proceeding that may be conducted by, any federal, state or local government agency or commission, including the Securities and Exchange Commission, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, the National Labor Relations Board, the state division of human rights, a local commission on human rights, or law enforcement

("Government Agencies"), or from communicating with my attorney, including disclosing documents or other information as permitted by law, without giving notice to, or receiving authorization from, the Company. Notwithstanding the foregoing, in making any such disclosures or communications, I agree to take all reasonable precautions to prevent any unauthorized use or disclosure of any information that may constitute Proprietary Information to any parties other than the Government Agencies or my attorney.

7. **Survival.** I agree that any change or changes in my employment title, duties, compensation, or equity interest after the signing of this Agreement shall not affect the validity or scope of this Agreement. I agree that the terms of this Agreement, and any obligations I have hereunder, shall continue in effect after termination of my employment, regardless of the reason, and whether such termination is voluntary or involuntary, and that the Company is entitled to communicate my obligations under this Agreement to any of my potential or future employers. I will provide a copy of this Agreement to any potential or future employers of mine, so that they are aware of my obligations hereunder. This Agreement, and any obligations I have hereunder, also shall be binding upon my heirs, executors, assigns and administrators, and shall inure to the benefit of the Company, its Affiliates, successors and assigns. This Agreement and any rights and obligations of the Company hereunder may be freely assigned and transferred by the Company, in whole or part, to any third party.

8. **Miscellaneous.** Any dispute in the meaning, effect or validity of this Agreement shall be resolved in accordance with the laws of the State of New York (provided that if I am a resident of California, any disputes shall be resolved in accordance with the laws of the State of California), without regard to the conflict of laws provisions thereof. Any legal action or proceeding relating to this Agreement shall be brought exclusively in the state or federal courts located in or with jurisdiction over New York County, New York (provided that if I am a resident of California, any legal action or proceeding shall be brought exclusively in the state or federal courts located in or with jurisdiction over San Francisco County, California), and each party consents to the jurisdiction thereof; however, the Company may seek injunctive relief and specific performance in any court of competent jurisdiction. The failure of either party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights. Unless expressly provided otherwise, each right and remedy in this Agreement is in addition to any other right or remedy, at law or in equity, and the exercise of one right or remedy will not be deemed a waiver of any other right or remedy. If one or more provisions of this Agreement is held to be illegal or unenforceable under applicable law, such illegal or unenforceable portion shall be limited or excluded from this Agreement to the minimum extent required so that this Agreement shall otherwise remain in full force and effect and enforceable. I acknowledge and agree that any breach or threatened breach of this Agreement will cause irreparable

harm to the Company for which damages would not be an injunctive relief with respect thereto (without the necessity of adequate remedy, and, therefore, the Company is entitled to posting any bond) in addition to any other remedies.

-- Signature Page Follows --

I HAVE READ THIS AGREEMENT CAREFULLY AND I UNDERSTAND AND ACCEPT THE OBLIGATIONS THAT IT IMPOSES UPON ME WITHOUT RESERVATION. NO PROMISES OR REPRESENTATIONS HAVE BEEN MADE TO ME TO INDUCE ME TO SIGN THIS AGREEMENT. I SIGN THIS AGREEMENT VOLUNTARILY AND FREELY, WITH THE UNDERSTANDING THAT I EITHER (1) HAVE RETAINED A COPY OF THIS AGREEMENT OR (2) MAY REQUEST A COPY OF THIS AGREEMENT FROM THE COMPANY AT ANY TIME.

MERLYN MIND, INC.

EMPLOYEE

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Address: _____

Dated: _____

Dated: _____

Appendix A

If I am employed by the Company in the State of California, the following provision applies:

CALIFORNIA LABOR CODE § 2870

Inventions Made by an Employee

- (a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:
 - (1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or
 - (2) Result from any work performed by the employee for his employer.
- (b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable.

If I am employed by the Company in the State of Delaware, the following provision applies:

DELAWARE CODE, TITLE 19 § 805

Employee's right to certain inventions.

Any provision in an employment agreement which provides that the employee shall assign or offer to assign any of the employee's rights in an invention to the employee's employer shall not apply to an invention that the employee developed entirely on the employee's own time without using the employer's equipment, supplies, facility or trade secret information, except for those inventions that: (1) relate to the employer's business or actual or demonstrably anticipated research or development, or (2) result from any work performed by the employee for the employer. To the extent a provision in an employment agreement purports to apply to the type of invention described, it is against the public policy of this State and is unenforceable. An employer may not require a provision of an employment agreement made unenforceable under this section as a condition of employment or continued employment.

If I am employed by the Company in the State of Illinois, the following provision applies:

ILLINOIS COMPILED STATUTES 765 § 1060/2

Employee rights to inventions - conditions.

- (1) A provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer does not apply to an invention for which no equipment, supplies, facilities, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer. Any provision which purports to apply to such an invention is to that extent against the public policy of this State and is to that extent void and unenforceable. The employee shall bear the burden of proof in establishing that his invention qualifies under this subsection.
- (2) An employer shall not require a provision made void and unenforceable by subsection (1) of this Section as a condition of employment or continuing employment. This Act shall not preempt existing common law applicable to any shop rights of employers with respect to employees who have not signed an employment agreement.
- (3) If an employment agreement entered into after January 1, 1984, contains a provision requiring the employee to assign any of the employee's rights in any invention to the employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer.

If I am employed by the Company in the State of Kansas, the following provision applies:

KANSAS CODE § 44-130

Employment agreements assigning employee rights in inventions to employer; restrictions; certain provisions void; notice and disclosure.

- (a) Any provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer shall not apply to an invention for which no equipment, supplies, facilities or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless:
 - (1) The invention relates to the business of the employer or to the employer's actual or demonstrably anticipated research or development; or
 - (2) the invention results from any work performed by the employee for the employer.
- (b) Any provision in an employment agreement which purports to apply to an invention which it is prohibited from applying to under subsection (a), is to that extent against the public policy of this state and is to that extent void and unenforceable. No employer shall require a provision made void and unenforceable by this section as a condition of employment or continuing employment.
- (c) If an employment agreement contains a provision requiring the employee to assign any of the employee's rights in any invention to the employer, the employer shall provide, at the time the agreement is made, a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility or trade secret information of the employer was used

and which was developed entirely on the employee's own time, unless:

- (1) The invention relates directly to the business of the employer or to the employer's actual or demonstrably anticipated research or development; or
- (2) the invention results from any work performed by the employee for the employer.
- (d) Even though the employee meets the burden of proving the conditions specified in this section, the employee shall disclose, at the time of employment or thereafter, all inventions being developed by the employee, for the purpose of determining employer and employee rights in an invention.

If I am employed by the Company in the State of Minnesota, the following provision applies:

MINNESOTA STATUTES § 181.78

Agreements; Terms Relating to Inventions.

Subdivision 1. Inventions not related to employment. — Any provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer shall not apply to an invention for which no equipment, supplies, facility or trade secret information of the employer was used and which was developed entirely on the employee's own time, and (1) which does not relate (a) directly to the business of the employer or (b) to the employer's actual or demonstrably anticipated research or development, or (2) which does not result from any work performed by the employee for the employer. Any provision which purports to apply to such an invention is to that extent against the public policy of this state and is to that extent void and unenforceable.

Subdivision 2. Effect of subdivision 1. — No employer shall require a provision made void and unenforceable by subdivision 1 as a condition of employment or continuing employment.

Subdivision 3. Notice to employee. — If an employment agreement entered into after August 1, 1977 contains a provision requiring the employee to assign or offer to assign any of the employee's rights in any invention to an employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility or trade secret information of the employer was used and which was developed entirely on the employee's own time, and (1) which does not relate (a) directly to the business of the employer or (b) to the employer's actual or demonstrably anticipated research or development, or (2) which does not result from any work performed by the employee for the employer.

If I am employed by the Company in the State of New Jersey, the following provision applies:

NEW JERSEY STATUTES § 34:1B-265

Employee rights to certain inventions.

Any provision in an employment contract between an employee and employer, which provides that the employee shall assign or offer to assign any of the employee's rights to an invention to that employer, shall not apply to an invention that the employee develops entirely on the employee's own time, and without using the employer's equipment, supplies, facilities or information, including any trade secret information, except for those inventions that: (a) relate to the employer's business or actual or demonstrably anticipated research or development; or (b) result from any work performed by the employee on behalf of the employer.

If I am employed by the Company in the State of North Carolina, the following provision applies:

NORTH CAROLINA GENERAL STATUTES § 66-57.1
Employee's right to certain inventions.

Any provision in an employment agreement which provides that the employees shall assign or offer to assign any of his rights in an invention to his employer shall not apply to an invention that the employee developed entirely on his own time without using the employer's equipment, supplies, facility or trade secret information except for those inventions that (i) relate to the employer's business or actual or demonstrably anticipated research or development, or (ii) result from any work performed by the employee for the employer. To the extent a provision in an employment agreement purports to apply to the type of invention described, it is against the public policy of this State and is unenforceable. The employee shall bear the burden of proof in establishing that his invention qualifies under this section.

If I am employed by the Company in the State of Utah, the following provisions apply:

UTAH CODE, §§ 34-39-2, 34-39-3

34-39-2.

Definitions.

As used in this chapter:

- (1) "Employment invention" means any invention or part thereof conceived, developed, reduced to practice, or created by an employee which is:
 - (a) conceived, developed, reduced to practice, or created by the employee:
 - (i) within the scope of his employment;
 - (ii) on his employer's time; or
 - (iii) with the aid, assistance, or use of any of his employer's property, equipment, facilities, supplies, resources, or intellectual property;
 - (b) the result of any work, services, or duties performed by an employee for his employer;
 - (c) related to the industry or trade of the employer; or
 - (d) related to the current or demonstrably anticipated business, research, or development of the employer.

- (2) "Intellectual property" means any and all patents, trade secrets, know-how, technology, confidential information, ideas, copyrights, trademarks, and service marks and any and all rights, applications, and registrations relating to them.

34-39-3.

Scope of act — When agreements between an employee and employer are enforceable or unenforceable with respect to employment inventions — Exceptions.

- (1) An employment agreement between an employee and his employer is not enforceable against the employee to the extent that the agreement requires the employee to assign or license, or to offer to assign or license, to the employer any right or intellectual property in or to an invention that is:
- (a) created by the employee entirely on his own time; and
 - (b) not an employment invention.
- (2) An agreement between an employee and his employer may require the employee to assign or license, or to offer to assign or license, to his employer any or all of his rights and intellectual property in or to an employment invention.
- (3) Subsection (1) does not apply to:
- (a) any right, intellectual property or invention that is required by law or by contract between the employer and the United States government or a state or local government to be assigned or licensed to the United States; or
 - (b) an agreement between an employee and his employer which is not an employment agreement.
- (4) Notwithstanding Subsection (1), an agreement is enforceable under Subsection (1) if the employee's employment or continuation of employment is not conditioned on the employee's acceptance of such agreement and the employee receives a consideration under such agreement which is not compensation for employment.
- (5) Employment of the employee or the continuation of his employment is sufficient consideration to support the enforceability of an agreement under Subsection (2) whether or not the agreement recites such consideration.
- (6) An employer may require his employees to agree to an agreement within the scope of Subsection (2) as a condition of employment or the continuation of employment.
- (7) An employer may not require his employees to agree to anything unenforceable under Subsection (1) as a condition of employment or the continuation of employment.
- (8) Nothing in this chapter invalidates or renders unenforceable any employment agreement or provisions of an employment agreement unrelated to employment inventions.

If I am employed by the Company in the State of Washington, the following provision applies:

REVISED CODE OF WASHINGTON § 49.44.140

Requiring Assignment of Employees' Rights to Inventions – Conditions.

- (1) A provision in an employment agreement which provides that an employee shall assign or offer to assign any of the employee's rights in an invention to the employer does not apply to an invention for which no equipment, supplies, facilities, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) directly to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer. Any provision which purports to apply to such an invention is to that extent against the public policy of

this state and is to that extent void and unenforceable.

- (2) An employer shall not require a provision made void and unenforceable by subsection (1) of this section as a condition of employment or continuing employment.
- (3) If an employment agreement entered into after September 1, 1979, contains a provision requiring the employee to assign any of the employee's rights in any invention to the employer, the employer must also, at the time the agreement is made, provide a written notification to the employee that the agreement does not apply to an invention for which no equipment, supplies, facility, or trade secret information of the employer was used and which was developed entirely on the employee's own time, unless (a) the invention relates (i) directly to the business of the employer, or (ii) to the employer's actual or demonstrably anticipated research or development, or (b) the invention results from any work performed by the employee for the employer.

Appendix B

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 Jefferson County Board of Education, a political subdivision of the Commonwealth of Kentucky doing business as the Jefferson County Public Schools (JCPS), an educational provider located at 3332 Newburg Road, Louisville, KY 40218 ("Institution") and Merlyn Mind, Inc., located at 8 West 40th Street, 20th Floor, New York, NY 10018-2235 ("Merlyn Mind").

PLEASE READ THIS AGREEMENT CAREFULLY. IT SETS FORTH THE LEGALLY BINDING TERMS AND CONDITIONS FOR USE OF 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 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) as soon as possible (but in no event later than 24 hours after the IT Administrator is notified) 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 only, 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](#) and the Data Sharing Agreement between JCPS and Merlyn Mind.

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

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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 Kentucky 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 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 8 40th Street, 20th Floor, New York, NY 10018-2235 or 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 but subject to applicable law, 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 with 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.

DocuSigned by:

Charles Prestia

A4981E5E515042E...

By: _____

Name: Charles Prestia

Title: Senior Vice President

Date: 8/31/2022

Date: _____