

**WASHINGTON LEARNING SOURCE
Vendor Agreement**

1. PARTIES

Merlyn Mind, Inc.
8 West 40th St., 20th Floor
New York, NY 10018

WASHINGTON LEARNING SOURCE
Puget Sound ESD
800 Oakesdale Ave SW
Renton, WA 98057

The parties agree to the following:

2. PURPOSE

Through this Agreement, awarded through RFP 1818-61, Merlyn Mind, Inc. (Merlyn Remote, Merlyn Origin, Merlyn Display) offers the Washington Learning Source (WLS) subscribers the opportunity to purchase Artificial Intelligence (AI) in Education Systems, at special volume levels.

3. INCORPORATION OF DOCUMENTS

The following documents are hereby incorporated by reference into this Vendor Agreement:

- Vendor Contact Information
- Additional Resellers
- Products and Contract Pricing
- WLS Quarterly Reporting Template
- WLS Standard Terms and Conditions

4. DEFINITIONS

- 4.1 **“Administrative Fee”** means the fee applicable to each Product for administrative services provided by WLS or Subscriber’s educational school district, which fee is set by schedules or other notices that WLS provides to MERLYN MIND, INC. from time to time with respect to the Products. Administrative fee will be applied to all product or subscription prices, renewals, and maintenance fees.
- 4.2 **“Product”** means any product or service that is available to be sold, licensed, or otherwise provided pursuant to this Vendor Agreement.
- 4.3 **“Subscriber”** means any ESD office, public and private K-12 school and school district, Washington educator, the Office of State Superintendent of Public Instruction, or other accredited educational institution, as listed in the Washington Education Directory, that has entered into a contract with WLS, or Washington State public agency that has entered into an Intergovernmental Cooperative Purchasing Agreement between PSESD and the public purchasing agency pursuant to which WLS authorizes such agency or entity to purchase or acquire access to products and/or services sold, licensed, or

otherwise provided by Vendors of goods and/or services under one or more contracts WLS has entered into with such Vendors. "Subscriber" does not include any such agencies and entity's operations outside the State of Washington.

4.4 **"Vendor"** means the party with whom the WLS is contracting to fulfill orders for this Vendor Agreement.

4.5 **"ESD"** refers to "Educational Service District".as defined in RCW 28A.310.010.

4.6 **"FTE"** refers to a "Full-Time Equivalent" K-12 student as defined in WAC 392-121-122.

4.7 **"Head Count"** refers to all students regardless of if they attend classes full-time in a high school building or attend work-based learning programs "off-site" or are enrolled in *Running Start* or *Virtual Academies*.

4.8 **"OEM"** means "Original Equipment Manufacturer".

4.9 **"Optional Use"** means that Washington State school districts that are members of the WLS may choose or not choose to use any vendors listed on the WLS site. The benefit for the Vendors is that their products and/or services will be listed on the Washington Learning Source website, a recognized purchasing cooperative that affords promotional benefits. For more information, visit WLS website at <http://www.walearningsource.org/>

5. ADDITIONAL AND AMENDED TERMS AND CONDITIONS

The following terms and conditions hereby take precedence over any contrary provisions in the documents referenced in Section 2 and 3 (of the overarching RFP). Unless otherwise notated below, the following terms and conditions are in addition to WLS Standard Terms and Conditions.

- 1) **Term:** Each party represents that this Vendor Agreement has been executed by their duly authorized representatives. It will become effective on the date signed by all parties and will continue for a period of one year (contract term). All times set forth in this Vendor Agreement shall be based upon the time in Renton, Washington.
- 2) **Renewal:** At the discretion of WLS, this Vendor Agreement may be renewed in writing for four subsequent one-year periods (renewal term) by mutual written agreement of the parties.
- 3) **Price and Products:** Under this Vendor Agreement, Subscribers will qualify for purchases through the Vendor at or below the prices listed. All prices shall remain firm (no changes that increase prices) from the date the Agreement is awarded until the contract term or renewal term end date.
 - Upon optional annual contract renewals, the Vendor may request price increases from the WLS. Such requests shall require a justification in writing.
 - Throughout the contract and renewal terms, price reductions are required if the OEM reduces the reseller's base price.
 - Upgraded products and services may be added to this Vendor Agreement upon WLS approval, but only if they replace products previously bid. All pricing must, at a minimum, reflect the same percentage discounts or better as established with this contract award.
 - Awarded vendors must provide on the first of each calendar quarter price decreases, new products, discontinued items, and any other changes or additions in order to ensure accurate WLS advertised prices.

4) Marketing

WLS Responsibilities:

- a. WLS will work with MERLYN MIND, INC. to develop and maintain a web page on the WLS web site to summarize the terms of the Vendor Agreement and pricing information for the WLS web page.
- b. The WLS will work with ESDs to reference MERLYN MIND, INC. and said web page in its communications to ESD participants to inform them of the availability of this Vendor Agreement
- c. The WLS will work with ESDs to use commercially reasonable efforts to disseminate information to Subscribers about the Products included in the Vendor Agreement through email announcements, direct mail, websites, meetings, and newsletter articles.

Vendor Responsibilities:

- a. MERLYN MIND, INC. will provide the WLS with information to be used for marketing purposes, such as logos and copy.
- b. MERLYN MIND, INC. will use the WLS logo on all its materials that market products on this contract.
- c. MERLYN MIND, INC. may sponsor and participate in events such as regional conferences, tradeshow, webinars, and showcases as appropriate.
- d. MERLYN MIND, INC. may co-host rollout events for Subscribers, such as lunch-and-learns and demonstrations.

WLS's Marketing:

Angela Bolam
Learning &
Development
Director
425-917-7901
abolam@psesd.org

MERLYN MIND, INC.

Marketing:

Justin Williams
302-299-9369
justin@merlyn.org

- 5) WLS Membership:** Pursuant to RCW 39.34, an intergovernmental (Interlocal) purchasing agreement forms the basis for WLS membership. All public K-12 educational institutions and associations published in the Washington State Education Directory, and Washington state public agencies are eligible to become WLS members and purchase from this optional use contract. Interlocal purchasing contracts allow either party to make purchases at the other party's accepted proposal price. A list of current WLS members is posted on the Washington Learning Source website:
<https://www.walearningsource.org/members>, MERLYN MIND, INC. will consult this list of members to determine customer eligibility.

- 6) WLS Administrative Fee:** All WLS sales realized or generated under or because of the WLS awarded contract, this Vendor Agreement, shall include an Administrative Fee of 3% of net sales. Purchasers shall reference the WLS contract number on their purchase orders at the time of purchase. As the administrator of the Vendor Agreement, MERLYN MIND, INC. must include the following data for each net sale or purchase through this Agreement:

- Invoice date
- Name of subscriber (school, district, or organization)
- ESD name where subscriber resides
- Invoice number
- Names and quantities of products purchased through each transaction
- Single unit purchase price
- Total purchase price
- Amount of administrative fee

- 7) Administrative Fee Payments:** During the contract and renewal terms of this Vendor Agreement, MERLYN MIND, INC. will submit quarterly accounting and remit administrative fee payments to WLS within 30 days following the end of each calendar quarter in accordance with the terms outlined in the following payment schedule. The administrative fees percentage shall not increase during the contract and renewal terms.

Payment Schedule	
January 31	April 30
July 31	October 31

- 8) Order Processing:** Orders will be processed in the following manner:
- a. Purchase orders from subscribers will be submitted to MERLYN MIND, INC. for fulfillment.
 - b. Purchase orders from the Subscribers must be in writing and made out to MERLYN MIND, INC. or designated reseller(s). Each order must reference the appropriate ESD# and the contact/school name/address/telephone/email or fax of the end user responsible for holding the license.
 - c. MERLYN MIND, INC. will invoice the subscriber and collect their payments. Shipping charges and Washington State sales tax will be added to the invoice, if applicable. Shipping charges shall be FOB Destination.

These procedures may be modified as needed, and any such changes will be mutually agreed to in writing by MERLYN MIND, INC. and WLS.

MERLYN MIND, INC.

Sales:

Reema Khanna

415-966-8246

reema@merlyn.org

- 9) Contract Administration:** Each party will designate a Contract Manager during the term of this Vendor Agreement whose responsibility shall be to oversee the party's performance of its duties and obligations pursuant to the terms of the Agreement. As of the Effective Date, WLS's and MERLYN MIND, INC. Contract Managers are as follows:

WLS's Contract Manager:
Purchasing/Contract
Administrator
425-917-7783
purchasingoffice@psed.org

MERLYN MIND, INC.
Contract Manager:
Evan Lock
484-222-1905
evan@merlyn.org

10) Monitoring: MERLYN MIND, INC. shall continuously monitor and record its Services to make sure they meet or exceed all Vendor Agreement provisions including Service Level Requirements. WLS shall have the right to examine MERLYN MIND, INC. records associated with purchases to ensure compliance with all requirements in this Vendor Agreement. Optional Use contract. MERLYN MIND, INC. failure to comply with the terms in the Vendor Agreement, including Service Level Standards, may result in corrective action or termination.

11) Incorporation of General Terms and Conditions: This Vendor Agreement includes and incorporates as if fully set forth herein the Standard Terms and Conditions.

We the undersigned agree to the terms of the foregoing Vendor Agreement.

WASHINGTON LEARNING SOURCE



Signature

Angela Bolam

Printed Name

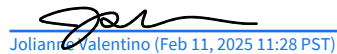
Learning & Development Support Systems Director

Title

Feb 11, 2025

Date Signed

PSESD Superintendent or Designee


Jolianne Valentino (Feb 11, 2025 11:28 PST)

Signature

Jolianne Valentino

Printed Name

Ex Dir Business and Operations

Title

Feb 11, 2025

Date Signed

MERLYN MIND, INC.



Levi Belnap (Feb 11, 2025 10:09 CST)

Signature

Levi Belnap

Printed Name

CEO

Title

Feb 11, 2025

Date Signed

STANDARD TERMS AND CONDITIONS

The submission of a Proposal is an offer to enter a Contract that, upon acceptance by WLS, obligates the Vendor (and their authorized agents) to comply with the Terms and Conditions set forth below, and all the requirements in the RFP documents. If there is an inconsistency with a requirement or special condition in the RFP documents, the Terms and Conditions shall govern.

Upon acceptance of an award, the Vendor agrees to the following:

1. **Compliance.** By submitting a Proposal, the Vendor agrees to comply with WLS Vendor Agreement terms, including offering the Proposal products for the WLS Contract price when it sells its products to the eligible Subscribers until the expiration of the Contract.
2. **Contract Execution.** The Vendor Agreement is considered fully executed at the time that the WLS Superintendent signs and the Vendor signs.
3. **Resellers, Distributors and Agents.** The resellers, distributors or agents identified in the Awarded Vendor's Proposal that will be performing obligations that are required under the Vendor Agreement on behalf of the Awarded Vendor, have been provided a copy of the WLS RFP documents and the Awarded Vendor's Proposal, and they are familiar with the Vendor Agreement requirements.
 - a) The resellers, distributors and agents identified in the Awarded Vendor's Proposal have entered into an agreement with the Vendor which obligates the resellers, distributors, and agents to comply with all the provisions associated with the Vendor Agreement when they are engaged in work that is associated with the Agreement.
 - b) The Awarded Vendor assumes full responsibility for ensuring that its resellers, distributors, and agents are in full compliance with the Vendor Agreement. The Awarded Vendor understands and agrees that it will be subject to the remedies that are imposed for violations of the Vendor Agreement, including violations that are committed by the Awarded Vendor's resellers, distributors, and agents. The Awarded Vendor is responsible for its resellers, distributors, and agents' performance of obligations in the Vendor Agreement and is obligated to monitor its resellers, distributors, and agents.
4. **Pricing.** WLS reserves the right to review at any time the pricing of this Vendor Agreement. Vendor represents and warrants that the price offered by Vendor to WLS Members for any products ordered by WLS Members (the "WLS Members Price") are equal to or less than standard prices offered by Vendor for similar products generally to similarly situated customers contracting for similar volumes under the same terms and conditions.
5. **Assignment.** Neither this Vendor Agreement nor any interest therein may be assigned by either party without the prior written consent of the other party, provided, however, that either party may assign its rights, obligations, or interests under this Agreement in connection with a merger, acquisition, divestiture, sale of business, reorganization or similar corporate transaction involving such party without such written permission provided that such successor entity shall be bound by the terms of this Agreement.
6. **Indemnification / Hold Harmless.** Vendor shall defend, indemnify, and hold the WLS, its officers, officials, employees and volunteers harmless from all claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with Vendor's performance of this Vendor Agreement, except for injuries and damages caused by the sole negligence of the WLS.

7. **Insurance.** The Vendor shall procure and maintain for the duration of the Vendor Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of this Agreement by Vendor, their agents, representatives, employees, or subcontractors.

Vendor shall provide a Certificate of Insurance evidencing:

- a) **Commercial General Liability** insurance written on an occurrence basis with limits no less than \$2,000,000 combined single limit per occurrence for personal injury, bodily injury, and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.
- b) **Cyber Liability** insurance or coverage with limits of not less than \$1,000,000 for each occurrence and an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or corruption or destruction of electronic information, intentional and/or unintentional release of private information, internet media liability, alteration of electronic information, extortion, and network security. This coverage is required to remain in effect for as long as necessary to cover any and all such claims.

The WLS shall be named as an additional insured on the Commercial General Liability insurance policy, as respects activities of Vendor and a copy of the endorsement naming The WLS as additional insured shall be attached to the Certificate of Insurance. The WLS reserves the right to receive a certified copy of all required insurance policies.

The WLS shall be given thirty (30) days prior written notice of any cancellation, suspension, or material change in coverage.

8. **Non-Exclusive Relationship.** The Vendor Agreement is not exclusive as to the products or goods or services similar to the products. Nothing in the Agreement prohibits WLS from entering into contracts with other Vendors or suppliers for the provision of the products or goods or services similar to the products in this contract.
9. **Compliance with FERPA.** Vendor will comply with the Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and its associated implementing regulations with respect to any information received by Vendor from WLS or any Subscriber. For the avoidance of doubt, this section does not create any obligations for Vendor with respect to information that is not in Vendor's possession or control.
10. **Prohibited Employees.** Vendor will prohibit any employee of Vendor from working at a Subscriber school if he or she would have contact with children at a Subscriber school during the course of his or her employment and if he or she has pled guilty to or been convicted of any felony crime involving the physical neglect of a child under chapter 9A.42 RCW, the physical injury or death of a child under chapter 9A.32 or 9A.36 RCW (except motor vehicle violations under chapter 46.61 RCW), sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, the sale or purchase of a minor child under RCW 9A.64.030, or violation of similar laws of another jurisdiction.
11. **Limitations on Confidentiality.** Vendor agrees that WLS may disclose to Subscribers the prices, payment terms, and delivery terms provided in this contract for the products, and such other terms of this Vendor Agreement that Vendor wishes to make available to Subscribers (through WLS). The Vendor acknowledges and agrees that WLS' obligation to comply with any confidentiality provisions under this Vendor Agreement is subject to and limited by applicable law, including the Washington Public Records Act (chapter 42.56

RCW).

12. **Applicable Law: Jurisdiction.** This Vendor Agreement will be governed by and construed in accordance with the laws of the State of Washington. Any dispute arising under, in connection with, or incident to this contract will be resolved exclusively in the state or federal courts located in King County, Washington.
13. **Termination.** WLS may terminate this Vendor Agreement for convenience at any time after the first anniversary of this contract Effective Date upon 30 days prior written notice to Vendor. In the event of such termination for convenience, Vendor shall have no obligation to provide a refund of any unearned pre-paid fees. WLS may terminate this Vendor Agreement immediately upon notice for any failure by Vendor to comply with the terms of Section 10. Either party may terminate this Vendor Agreement immediately upon written notice at any time if the other party is in material breach of any material term of this Agreement and has failed to cure that breach within 30 days after written notice.
14. **Licensed to do Business in Washington.** Vendor must be licensed to do business in the State of Washington. Upon award of contract, Vendor will provide WLS with Vendor's Washington State Department of Revenue Tax Registration Number.
15. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Vendor certifies that neither it nor its principals are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions by any federal department or agency.
16. **Survival Clause.** All purchase transactions, applicable software license agreements, warranties or service agreements that were entered into between Vendor and Subscriber under the terms and conditions of the Contract shall survive the expiration or termination of the Contract. All purchase orders accepted by vendor shall survive expiration or termination of the Vendor Agreement.
17. **Warranty of Accessibility.** Vendor warrants that the system and services provided to Subscriber will comply with all local, state, and federal laws. Vendor further agrees that the system and services provided to Subscriber will comply with all laws prohibiting discrimination with regard to race, creed, color, national origin, sex, sexual orientation, marital status, age, or the presence of any sensory, mental, or physical disability. Vendor will furnish such documents and information as may be reasonably requested by Subscriber to evidence Vendor's compliance with the terms of this agreement.

Vendor represents that the system and services provided to Subscriber under this agreement will, at a minimum, conform with all applicable laws, including Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d), as amended, all other regulations promulgated under Title II of the Americans with Disabilities Act, and the accessibility standards of the Web Content Accessibility Guidelines ("WCAG") 2.0 AA provided, however, that Vendor will have no obligations with respect to such conformance to the extent relating to any portion of the system and services provided or developed by third parties or any user-generated content.