



Learningtech.org

The Miller Institute for Learning with Technology

Consulting Agreement

This agreement is made and entered into by authorized representatives of The Miller Institute for Learning with Technology [hereinafter, **Learningtech.org**] and **Client**, as further identified on the signature page of this document.

Whereas,

- *Client* seeks to obtain technology-related labor and consulting services, and has determined that *Learningtech.org* is qualified to perform such work;
- *Learningtech.org* seeks to provide such services, on a *fee for service* basis; and
- the parties have mutually established the nature of duties, schedule, scope of work, and fees including payment schedule, either as detailed explicitly herein or via an attached written *Proposal [the "associated Proposal"]*, which is hereby incorporated by reference;

Now, therefore, the parties, including their successors or assigns, hereby agree as follows.

1. Unless specified otherwise, this agreement applies to all work performed by *Learningtech.org* for *Client* as of the first date signed by authorized representatives of both parties.
2. This agreement applies to all work performed by *Learningtech.org* for *Client* through the effective termination date. Unless terminated in accordance with paragraphs 3 or 4, below, or otherwise specified or extended in writing, this agreement shall cease to be applicable to new work as of June 30, 2016. This agreement shall automatically renew annually on July 1, through June 30, 2019, unless either party notifies the other of intent to cancel or a need for other modifications before the annual renewal date. In the event that the Consumer Price Index [CPI] has increased by 1% or more since the effective date of this agreement, then the associated pricing shall automatically adjust accordingly, with no requirement for notification if that is the only modification. Each renewal retains all initial terms and conditions, taking into account provision for annual fee adjustments, unless otherwise mutually agreed in writing. Obligations relating to confidentiality and non-retention of the other party's employees/subcontractors remain effective beyond the effective termination date as described herein. For not less than 90 days after termination, *Learningtech.org* will make available to *Client* (or to *Client's* agent, upon *Client's* written request) access to an electronic repository of relevant project documentation being maintained by *Learningtech.org* on behalf of *Client*.
3. *Client* may initiate early termination of this agreement by giving at least thirty (30) days written notice to *Learningtech.org* and paying for all work completed through the termination date. For projects paid in periodic installments, termination must occur on a period boundary.
4. *Learningtech.org* may initiate early termination of this agreement by giving at least thirty (30) days written notice to *Client* and forfeiting and/or refunding, as appropriate, 100% of any funds received for which labor has not yet been completed prior to the termination date. For projects paid in periodic installments, termination must occur on a period boundary.
5. Estimates of labor required to perform a given task are provided for planning purposes only, and depend upon numerous assumptions relating to the scope of work. There is no guarantee that additional effort might not be required. However, *Client's* obligations arising from this agreement shall not exceed the proposed purchase order [P. O.] amount, for the initial Scope of Work, unless and until additional funds are subsequently committed in writing by *Client*, such as to extend the scope or duration of the project over time. If a P. O. is issued pursuant to this agreement, any *Not to Exceed* amount shall be consistent with this paragraph. For projects involving a *Time and Materials* element, regular progress payments shall be made by *Client* based upon invoices received. For projects involving a *Fixed Fee* element, payments shall be made by *Client* according to the payment schedule indicated. In some cases, both *fixed fee* and *time and materials* elements may be involved.
6. Before work can commence, a deposit of the following amount may be required, as indicated on the signature page of this document and/or in the associated proposal. Deposit amounts are generally calculated as follows:
 - For *Time and Materials* projects, twenty percent (20%) of the Proposed P.O. amount;
 - For *Fixed Fee* projects, the first periodic payment;
 - In some cases, another amount may be specified.

The deposit will be applied as a credit toward invoices for work performed. Upon termination of this agreement without renewal, after all outstanding invoices have been paid any undisputed credit balance shall be refunded by *Learningtech.org* to *Client* within thirty (30) days. At *Learningtech.org's* sole discretion, deposit requirements may be waived for small projects.

7. *Learningtech.org* (including the corporation itself and its officers, directors, employees, subcontractors, and volunteers) shall not be liable for any loss, injury, claim, liability, or damage of any kind resulting in any way from actions, delays, or failures to act, on the part of *Client* or of any third parties beyond *Learningtech.org*'s control, or from latent flaws in third party products or services recommended to *Client* in good faith by *Learningtech.org*. Notwithstanding anything to the contrary in this Agreement, *Learningtech.org* shall not be liable for any special, indirect, consequential, or punitive damages or lost profits. The limitation of liability set forth herein is for any and all matters for which *Learningtech.org* may otherwise have liability arising out of or in connection with this Agreement, whether the claim arises in contract, tort, statute, or otherwise. *Client*'s exclusive remedy for any claim arising out of or relating to this Agreement shall be for *Learningtech.org*, in its discretion, upon receipt of written notice, either: (i) without any implication or admission of fault, to promptly use commercially reasonable efforts to cure, at its own expense, the matter that gave rise to the claim for which *Learningtech.org* is allegedly at fault, or (ii) to return to *Client* the fees paid by *Client* to *Learningtech.org* for the particular service that gave rise to the claim. In no circumstance shall the aggregate liability of *Learningtech.org* (including the corporation itself and its officers, directors, employees, subcontractors, and volunteers) in connection with any claim arising out of or relating to services performed, delays in performance, or failure to perform on the part of *Learningtech.org*, exceed such amount. *Client* agrees that it will not allege that this remedy fails its essential purpose and that this remedy is in lieu of all other remedies.
8. Unless credit terms have been arranged in advance, such as by the issuance and acceptance of a valid Purchase Order, payment is expected at the time that services are rendered. When credit is extended by *Learningtech.org* to *Client*, *Learningtech.org* shall submit invoices to *Client* from time to time (not more often than twice monthly nor less often than quarterly). In the case of Milestone-based or *Fixed Fee* agreements, the payment schedule has been set forth below or in the associated Proposal, if any. In the case of *Time and Materials* agreements, invoices shall provide a reasonable degree of detail including the dates work was performed, the names of the contributors, brief descriptions of activities, and the approximate time spent or milestones met. *Client* agrees to use reasonable efforts to pay within 15 days from receipt of invoice, and in no event later than 30 days. *Learningtech.org* has the right to stop work if any unpaid invoice aging exceeds thirty (30) calendar days, regardless of the potential for incidental or consequential damages to *Client*, such as not meeting deadlines including for grant applications or E-Rate filings. Promotional rates or other discounts shall automatically cease to be applicable to future invoices in the event that any invoice remains unpaid after thirty days. Late fees and/or finance charges up to the maximum amounts allowed by law shall be applied to past due accounts. Payments by *Client* will thereafter be applied first to late fees and accrued interest, and then to the principal unpaid balance. *Learningtech.org*'s waiver of or failure to enforce these provisions on one or more prior occasions shall not preclude or reduce *Learningtech.org*'s rights to enforce these provisions on subsequent occasions. *Client* shall pay attorney fees, court costs or other costs incurred to collect delinquent accounts.
9. This agreement is not a contract of employment. *Learningtech.org* is a corporate independent contractor and is responsible for its own payroll, income and sales taxes. *Learningtech.org*'s Federal Employer Identification Number is _____.
10. Except for pre-existing intellectual property or to the extent explicitly agreed otherwise in writing, work products directly resulting from this contract shall be *works for hire*, owned by *Client*.
11. *Learningtech.org* warrants that it will provide all necessary tools and services pursuant to its obligations under this agreement, except to the extent that the parties specifically agree in writing that certain specific tools or services are to be provided in a different manner. This does not include products or services purchased on behalf of *Client* for use by *Client*. *Client* will be responsible for all sales taxes payable on such purchases, and shall receive licenses to any software acquired specifically for *Client* under this agreement.
12. *Learningtech.org* warrants that services shall be performed by personnel possessing reasonable competency, following applicable industry standards, in a timely manner, and in accordance with best practices as generally recognized in the relevant fields of endeavor. No other representation, express or implied, and no warranty or guarantee are included or intended in this Agreement, or in any report, opinion, deliverable, work product, document or otherwise. Furthermore, no guarantee is made as to the efficacy or value of any services performed or software developed. This section sets forth the only warranties provided by *Learningtech.org* concerning its services and resulting work products. This warranty is made expressly in lieu of all other warranties, express or implied, including without limitation any implied warranties of fitness for a particular purpose, merchantability, non-infringement, title or otherwise.
13. Labor amounts mentioned in this Agreement and/or associated Proposal apply only to labor costs. Expenses incurred by *Learningtech.org* on behalf of *Client* for materials, parts, travel expenses, reproduction, postage, extensive cellular or long-distance calls, shipping, or other out-of-pocket costs (normally to be approved verbally, in advance) whenever not explicitly subsumed by any *Fixed Fee* elements of this project shall be invoiced at actual cost and shall not reduce the amount of any labor charges or commitments. *Learningtech.org* will alert *Client* as to likely expenses in advance and shall provide original receipts for each amount that is in excess of \$25. If *Learningtech.org* is asked to purchase more than nominal quantities of parts, equipment, services, or software on behalf of *Client*, a handling fee not less than the actual labor costs involved in procurement of the items will be applied and a deposit up to the estimated cost of the items may be required.

14. Minimum labor charges may be applicable to onsite visits, depending on location, except for any visit costs explicitly subsumed by a fixed fee Scope of Work, as detailed herein or in the associated Proposal, if any. *Learningtech.org* does not charge for travel time *per se*, but does charge for mileage at I.R.S.-approved rates, and other actual travel expenses, as well as for tangible work performed *en route* (such as meeting preparations while in flight). The applicable minimum for *Client's* primary location shall be as indicated on the signature page of this document. (If multiple locations for on site visits are involved, a separate sheet indicating each location and the applicable minimum should be attached.) Minimums may be waived or reduced at the sole discretion of *Learningtech.org*, in special situations, such as where suitably skilled personnel are already scheduled to be nearby and available at the time of a requested visit. For "by the hour" assignments, where applicable, minimum charges of fifteen minutes per incident shall apply to online conversations or telephone consultations and support.
15. Except as stated otherwise elsewhere in this Agreement and/or the associated Proposal, if any, *Learningtech.org* reserves the right to review and adjust labor rates once per year, on July 1. Annual rate adjustments may apply to both *Time and Materials* and *Fixed Fee* arrangements. Such automatic annual rate increases shall not exceed the adjusted Consumer Price Index, as published by the U.S. Bureau of Labor Statistics. For rate increases in excess of the adjusted Consumer Price Index, or at other times, *Learningtech.org* shall provide written notice of any such rate increases at least thirty (30) days before they become effective for new work and *Client* shall have the option to terminate the agreement as of the proposed increase date.
16. *Learningtech.org* agrees that, in connection with this Agreement, *Learningtech.org* may have access to private or confidential information which may be owned or controlled by *Client* including proprietary details or private information, the disclosure of which to third parties will be damaging to *Client*, its employees or students. *Learningtech.org* also understands and agrees that the disclosure of such information may violate state and/or federal law and may subject *Learningtech.org* to civil liability. Consequently, *Learningtech.org* agrees that all such information disclosed by *Client* to *Learningtech.org* shall be held in strict confidence and used only in performance of the work, unless disclosure is required by law or court order. *Learningtech.org* shall exercise the same standard of care to protect such data as is used to protect its own information.
17. Each party agrees not to directly retain or offer to retain the services of the employees or subcontractors of the other party, for the duration of this contract and for an additional six-month period upon termination of this contract, in the U.S. states within which the parties actively conduct business operations, unless explicitly released from this obligation in writing. The parties agree that each violation of this provision shall entitle the non-breaching party to a payment of \$10,000 or one-half of one year's compensation proposed to be earned by the retained employee or subcontractor, whichever is greater.
18. When written notices are required by this agreement, notice will be deemed given, five (5) business days after deposit in the U.S. mail, using the addresses listed below, or when provided by email provided that a return receipt or message of reply has been sent by the recipient to the original sender. Changes of address for notices shall become effective when notice is provided in the same manner as for other notices.
19. This agreement shall be interpreted in accordance with the laws of the State of California.
20. If any portion of this agreement is found to be in violation of any applicable laws or regulations, or otherwise unenforceable, then that portion shall be considered null and void, but the remainder of this agreement shall remain in force.
21. This agreement – including the associated Proposal (an integral part of this Agreement, if any) – constitutes the entire understanding of the parties with respect to this matter, and any changes or modification must be in writing and signed by duly authorized agents of both parties.
22. *Learningtech.org* shall procure and maintain during the full term of this Agreement appropriate types and amounts of insurance coverage, including:
 - Not less than one million dollars (\$1,000,000) per occurrence General Liability insurance;
 - Not less than one million dollars (\$1,000,000) per occurrence Professional Liability insurance appropriate to nature of the work to be performed;
 - Workers' Compensation insurance as required by law.
23. E-Rate projects are required by the Universal Services Administrative Company [USAC] to be further governed by one or more corresponding Letter(s) of Agency [LOAs]. Sample LOAs are available for review upon request. E-Rate projects also require that *Client* grant *Learningtech.org* full access to the online billing systems of its telecommunications and Internet service providers, to help ensure that all eligible services are properly discounted by E-Rate.

24. The Scope of Work shall be as set forth below (and/or in the associated Proposal, if any), taking into account all Key Assumptions including collaborative obligations of the *Client*. For *Fixed Fee* projects, some elements may vary depending upon factors that arise in the course of the work, such as changes in the number of locations receiving certain types of services.
25. The Fees and Payment Schedule shall be as set forth below and/or in the associated Proposal, if any. A deposit plus regular progress payments are required; work cannot begin until the deposit has been paid, and work may stop if payments fall behind schedule. Many projects may involve a combination of a *Fixed Fee* portion, for a well-defined Scope of Work, plus a *Time and Materials* contingency, for necessary, incremental work falling outside the Key Assumptions or well-defined Scope. This can be due to *Client*-requested changes in Scope, unanticipated changes in *Client* circumstances (adding or closing schools, for example), or inaccuracy of Key Assumptions as documented in this Agreement or associated Proposal (such as if *Client* becomes unable to provide required documentation in a timely manner). Resulting incremental effort is charged on a *Time and Materials* basis. Actual out-of-pocket expenses not explicitly covered by *Fixed Fees* are billed at actual cost, with receipts and without markup of any kind. Incremental hourly work, where applicable, is billed based on the nature of the work performed, according to the Labor Rate Schedule in effect at the time the work is performed. Except to the extent explicitly indicated otherwise in this Agreement and/or associated Proposal, services will be provided on a fee-for-service, *Time and Materials* basis.

Hourly Rates, Applicable to *Time and Materials* Projects or Project Elements
Effective for schools and nonprofits through June 30, 2016; Adjustable within CPI Annually on July 1

Category	Rate
Complex Consultations (Chief Technical Officer)	\$185.00
Server Installation/Configuration; Network Design, Complex Troubleshooting; Cabling Installation Supervision; Complex Web Programming; Complex Data Manipulation; Senior Instructor, VPs	\$165.00
Most E-Rate Application and Tech Plan Preparation work, Straightforward Student Information Systems Support/Training; Instructor	\$140.00
Most Desktop/Laptop/Tablet/Phone Technical Support; Static Web Page Creation/Editing; Cabling Installation; Assistant Instructor	\$90.00
Administrative or Clerical Support; Routine Data Entry; Most Intern Labor	\$49.00

Signature Page

Executed on the date(s) set forth below, by duly authorized agents for the respective parties.

Consultants: Learningtech.org <i>The Miller Institute for Learning with Technology</i>	Client: San Carlos School District
Address: 751 Laurel Street	Address: 1200 Industrial Road
Address, continued: #411	Address, continued: Unit 9
City: San Carlos	City: San Carlos
State: CA	State: CA
ZIP: 94070	ZIP: 94070
Telephone: 650-598-0105	Telephone: 650-508-7333
Fax: 866-801-8667	Fax: 650-508-7340
Email Address: mlmiller@learningtech.org	Email Address: rporter@scsd.k12.ca.us
Minimum Visit Hours for Primary Location: 10 hours	
Deposit Required Before Start of Work: \$ 1,575.00	
Proposal/Agreement Identifier: scsd_ff_renewal_20150525	P.O. Number or Project Identifier for Invoices:
Name of Authorized Representative: Mark L. Miller, Ph.D.	Name of Authorized Representative: Robert Porter
Title: President and Executive Director	Title: COO
Signature: Mark L. Miller	Signature: Robert Porter
Date: 05/27/2015	Date: 6/9/2015
Consulting Services Agreement Version 20140529	