



CLIENT CONSULTING AGREEMENT

This Consulting Agreement (the “Agreement”) is made as of this 15th day of February, 2017 (the “Effective Date”) by and between **Learning Forward** and **Horseheads Central School District**, with its principal place of business at **One Raider Lane, Horseheads, New York 14845**.

In consideration of the mutual covenants herein contained, Learning Forward and Client hereby agree as follows:

1. **Scope of Services.** Learning Forward shall provide the following services to Client (the “Services”):
 - a. Description of Services. Twenty days of onsite support from Learning Forward Senior Consultant Ann Delehant to assist the district’s 2030 Strategic Team, Education Core Team, and Capital Projects Team in systemwide strategic planning.
 - b. Costs/Fees/Charges. Not to exceed \$76,000. See section 1d for more details.
 - c. Timeframe of Services. Onsite dates will be negotiated between district and consultant but will be between date of contract signing and November 30, 2017. Dates outside this range will be negotiated between Learning Forward and Horseheads Central School District, and Ann Delehant.
 - d. Additional Terms. Cost includes \$3,400 daily rate for onsite consulting fee plus four planning days for consultant at \$2,000 per day.

2. **Warranties and Disclaimers.** Learning Forward warrants that all Services will be performed using generally accepted industry standards and practices. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, THERE ARE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. In no event will either party be liable, one to the other, for special, indirect, or consequential damages in connection with or arising out of this Agreement.

3. **Confidentiality.** Each party (the “Receiving Party”) agrees to treat as confidential and not disclose to others or use (except as permitted in this Section 3) any Proprietary Information of the other party (the “Disclosing Party”) submitted to the Receiving Party. “**Proprietary Information**” is information that a reasonable person would consider to be confidential or proprietary. Learning Forward Proprietary Information shall include, without limitation, information containing, based upon, or related to Learning Forward’s Deliverables. The Receiving Party shall not use any Proprietary Information of the Disclosing Party for any purpose of its own, other than in performance of this Agreement. The Receiving Party agrees to take reasonable measures, at least consistent with those taken to protect its own similar types of Proprietary Information, to protect the Disclosing Party’s Proprietary Information against disclosures or uses prohibited by this Agreement.

The restrictions contained in this Section 3 shall not apply to any information that is (i) generally known, or becomes generally known, to the public through no wrongful or negligent act of the Receiving Party, (ii) in the possession of the Receiving Party prior to its entering into this Agreement and the same can be demonstrated by the Receiving Party's records, (iii) has been independently developed by the Receiving Party without use, directly or indirectly, of the Disclosing Party's Proprietary Information; (iv) is rightfully received by the Receiving Party from a third party without restriction and without breach of this Agreement or any other agreement; (v) is approved for release by written authorization of the Disclosing Party; or (vi) is required to be disclosed by Court order, subpoena, other legal process or the New York Freedom of Information Law (New York Public Officers Law Article 6).

4. Ownership of Deliverables and License. All Deliverables (as defined below) developed or otherwise provided by Learning Forward under this Agreement will be the sole property of Learning Forward. Subject to Section 7 below, Learning Forward grants a perpetual, nonexclusive, nontransferable, royalty free license to Client to use (but not modify) the Deliverables for Client's internal purposes. Client agrees that it has no right, title or interest to the Deliverables other than the license rights described in this Section 4. In consideration of the mutual promises contained in this Agreement, and to the extent that Client is determined to have any interest in a Deliverable (other than the rights granted to Client in this Section) by operation of law or otherwise, Client hereby irrevocably transfers and assigns and agrees to transfer and assign to Learning Forward as Learning Forward's exclusive property, all worldwide right, title, and interest in and to the patent rights, copyrights, trade secrets, and other proprietary rights (including, without limitation, applications for registration thereof, and all priority rights therein under applicable international conventions for the protection of such rights) in, and ownership of such Deliverables that Client may have, as and when such rights arise. Client shall cooperate fully in (i) vesting in Learning Forward the ownership of the proprietary rights to the Deliverables, and (ii) assisting Learning Forward in obtaining patent, copyright or any other intellectual property rights in the Deliverables and in maintaining and protecting Learning Forward's proprietary rights, including, without limitation, executing any documents which Learning Forward reasonably deems necessary for such purpose.

The term "**Deliverable**" shall mean all work produced or otherwise provided by Learning Forward under the terms of this Agreement, whether preliminary or final, and on whatever media rendered, including, without limitation, all documents, reports, presentations or other materials, or other works of authorship, all releases, creations, updates, expressions, improvements, enhancements, modifications, research, methods, drawings, processes, computer programs, versions, and documentation, whether patentable or un-patentable, which are first conceived or made or first actually or constructively reduced to practice pursuant to this Agreement.

5. Nonsolicitation of Learning Forward's Employee's Consultants and Subcontractors. During the Term of this Agreement, and for a period of one (1) year after termination of this Agreement for any or no reason, Client agrees it will not without Learning Forward's express written consent:

- 1) Employ or retain or attempt to employ or retain, directly or indirectly, personally or through any entity with which Client may be associated, any employee, consultant, or independent contractor of Learning Forward; or
- 2) Induce any employee, consultant, or independent contractor of Learning Forward to leave the employ or terminate its relationship with Learning Forward, for any reason; or
- 3) Hire or retain any employee, consultant, or independent contractor of Learning Forward who has left the employ or terminated its relationship with of Learning Forward during the term of Client's relationship with Learning Forward or during the one year period thereafter.

6. Use of Name and Publicity. Client agrees that it shall not, without prior written consent of Learning Forward in each instance, use in advertising, publicity or otherwise the name of Learning Forward, or any partner or employee of Learning Forward, nor any trade name, trademark, trade device or simulation thereof owned by Learning Forward.

7. Termination. Either party may, at its election, upon thirty (30) days prior written notice, terminate this Agreement; provided, however, that the termination of this Agreement shall not affect in any way any right or claim of any party accruing prior to the date of termination, including without limitation, any right or claim of Learning Forward for compensation payable for Services rendered prior to such termination date. In the event this Agreement is terminated by either party and Learning Forward is not paid for the Deliverables, Client shall not have any License under Section 4 to use the Deliverables.

8. General Terms.

- A. This Agreement shall be governed and construed in accordance with the laws of the State of New York applicable to contracts made and fully performed therein, and the state and federal courts locate in New York shall have exclusive jurisdiction of all suits and proceedings arising out of or in connection with this agreement. Both parties hereby submit to the jurisdiction of said courts for purposes of any such suit or proceeding, and waive any claim that any such forum is an inconvenient forum.
- B. Any notices to either party under this Agreement shall be in writing and delivered by hand or sent by nationally recognized messenger service, or by registered or certified mail, return receipt requested, to the address set forth above or to such other address as that party may hereafter designate by notice. Notice shall be effective when received, which shall be no greater than one (1) business day after being sent by a nationally recognized messenger service or three (3) days after being sent by mail.
- C. Client may not, without the written consent of Learning Forward, assign, subcontract, or delegate its obligations under this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns.
- D. In the event that any part of this Agreement shall be declared unenforceable or invalid, the remaining parts shall continue to be valid and enforceable.
- E. This Agreement represents the entire Agreement between the parties. The Agreement may not be amended, changed, or supplemented in any way except by written Agreement signed by both parties.
- F. The waiver by either party of a breach or violation of any provision of this Agreement shall not constitute a waiver of any subsequent or other breach or violation.
- G. Sections 2-8 shall survive the expiration or termination of this Agreement. A breach of any of Client's covenants set forth in this Agreement would result in irreparable injury and damage to Learning Forward for which Learning Forward would have no adequate remedy at law, and Client agrees, in the event of said breach, that Learning Forward shall be entitled to immediate injunctive relief to prevent such violation or continued violation, without having to prove damages. The prevailing party shall be entitled to all costs and expenses, including reasonable attorneys' fees incurred.

H. Client Contact person designation

Name: Anthony Gill
Title: Assistant Superintendent
Email: AGILL@horseheadsdistrict.com
Phone: (607) 739-5601, ext. 4247

- I. This Agreement may be executed in one (1) or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one (1) and the same instrument.

CLIENT:
Horseheads Central School District

LEARNING FORWARD

BY:

By:

Dr. Thomas J. Douglas, Superintendent of
Schools


Michael Lanham, Chief Operating Officer

Pamela Strollo, President, Board of
Education

Federal Tax ID