

Stronge & Associates Educational Consulting, LLC

Subscription Agreement and Statement of Work (“Agreement”)

Stronge & Associates Educational Consulting, LLC (“STRONGE”) will provide Randolph Township (“Customer”) with the Stronge Effectiveness Performance Evaluation System (“EPES”) for teachers, educational specialists, principals and superintendents for use with a Web-based online educator observation and appraisal management system (OASYS) through the website of My Learning Plan (“MLP”), located at www.MyLearningPlan.com. OASYS Management System (“OMS”) is a web-based application that is used to track, manage and report on the educator evaluation process. The supply of EPES and use of EPES by the Customer will be subject to the terms of the Agreement.

The provision of services by MLP and use of OASYS by the Customer will be subject to a separate subscription agreement between MLP and the Customer (“MLP Agreement”).

1. Features of STRONGE EFFECTIVENESS PERFORMANCE EVALUATION SYSTEM (“EPES”)

Guidebooks and handbooks, video-based simulations, forms, fact sheets, presentations, research reports, technical reports, training activities, resource listings and standards with rubrics.

2. STRONGE Responsibilities

2.1 During the term of this Agreement, STRONGE agrees to perform as follows:

- i) Supply EPES to Customer.
- ii) Use all commercially reasonable efforts to respond to questions from the Customer in a timely manner.

2.2 The Technical Assistance and training that can be provided by STRONGE and the pricing for the Technical Assistance and training will be provided in a separate document through STRONGE.

3. Updates and Enhancements

STRONGE may provide updates and enhancements (“Updates and Enhancements”) which STRONGE at its sole discretion deems to be logical improvements to components of EPES previously supplied to Customer under the Agreement, and which STRONGE makes generally available to other Customers, and does not separately price or market. Any Updates and Enhancements that are provided to Customer shall be deemed part of EPES and shall be used in accordance with the requirements and obligations set forth in the Agreement.

4. Customer’s Responsibilities

During the term of this agreement, Customer agrees to perform as follows:

- 4.1 Designate at least one of Customer's employees (or consultants) as the liaison for all communications between STRONGE and Customer.
- 4.2 Timely perform all editing, updating and other tasks as agreed upon by the parties.

5. Customer's Use

The Agreement provides Customer the right to use: 1) EPES and any Updates and Enhancements and associated documentation and reference material and 2) EPES in My Learning Plan OASYS during the term of the Agreement. OMS and EPES shall be used by Customer solely for Customer's own internal use and is subject to the rights and requirements specified in the Agreement and the MLP Agreement. The provision of services by MLP and use of OASYS by the Customer will be subject to the MLP Agreement between MLP and the Customer. The MLP Agreement will include a provision for payment of Annual User Subscription Fees that comprises, but is not limited to the fee paid for OMS and the fee paid for the license to use EPES.

6. Term and Termination

This agreement shall be for a term of one year, commencing on the date of the last to be signed of the Agreement or the MLP Agreement (the "Effective Date"), and shall automatically renew for successive one-year terms unless one party notifies the other of its intention not to renew the agreement at least 30 days prior to the expiration of the then current term.

Either party may terminate the agreement for any reason with 90 days written notice. However, upon the material breach of the Agreement by either party, the other party may terminate the Agreement immediately. If the Customer terminates this Agreement, STRONGE will refund to Customer only the prorated portion of the fee paid to MLP for the license for use of EPES remaining under the Agreement.

7. Fees

In consideration for the services provided by STRONGE to Customer, Customer shall upon execution and delivery of the STRONGE Agreement pay to MLP the fees set forth in the MLP Agreement. The annual price paid by Customer to MLP includes the fee for the license for use of EPES. In the event that Customer automatically renews this agreement, Customer shall pay to MLP the fees set forth in the MLP Agreement within 30 days from the annual anniversary of the Effective Date of the Agreement.

8. Ownership and Confidentiality

EPES including any rubrics, guidebooks and handbooks, video-based simulations, forms, fact sheets, presentations, research reports, technical reports, training activities, resource listings,

and other programs, systems, data, and materials furnished by STRONGE to Customer including all trademarks, trade names, logos, characters and the look and feel of EPES, including without limitation, all copyrights, trademarks, trade names and other proprietary rights inherent therein or appurtenant thereto, is and will remain the property of STRONGE and Customer will have no rights or interests in this except as provided in this Agreement.

9. Customer Data

Customer's data will not be utilized by STRONGE for any purpose other than that of rendering services to Customer under the Agreement, nor will Customer's Data or any part thereof be disclosed to third parties by STRONGE, its employees or agents except as provided for in Paragraph 10. For the avoidance of doubt, Customer's Data may be disclosed to MLP for the purpose of providing services under the Agreement or MLP Agreement. Each party to the Agreement agrees that Customer may disclose Customer Data as required or at its discretion.

Customer's and its User's data is and will remain the property of Customer and, upon the termination of the Agreement for any reason, such data will be returned to Customer, subject to Customer's payment of all fees due and owed by Customer under the Agreement and the fee paid for the license to use EPES under the MLP Agreement.

10. Confidentiality

Each party agrees that all information communicated to it by the other and by MLP will be held in strict confidence and will be used only for the purposes of the Agreement and that no such information ("Information") will be disclosed by the party receiving the Information ("Recipient"), its agents or employees without the prior written consent of the party disclosing the Information ("Disclosing Party") unless the Information a) is now or hereafter becomes, through no act or omission on the part of Recipient, generally known or available, or is now or later enters the public domain through no act or omission on the part of Recipient; b) was acquired by Recipient independently of this Agreement and without restriction as to use or disclosure; c) is hereafter rightfully furnished to Recipient by a third party, without restriction as to use or disclosure; d) is information which Recipient can document was independently developed by Recipient; e) is required to be disclosed pursuant to law or regulation, provided Recipient gives notice to Disclosing Party of such required disclosure; or f) is disclosed with the prior written consent of Disclosing Party.

If the Recipient is required disclose any portion of the Information or STRONGE is required by law to disclose any portion of Customer Data, whether with or without a guarantee of confidentiality, STRONGE or the Customer as applicable will notify the other in writing within two (2) business days of learning of the requirement to disclose Information or Customer Data.

Customer or its successor is obligated to keep STRONGE's information confidential for five (5) years after the termination of this Agreement.

11. Non-Performance in Certain Cases

As with all services, access to EPES is sometimes interrupted due to conditions beyond STRONGE's control. STRONGE shall be excused from performance of this Agreement, in whole or in part, as a result of delays caused by Customer, a third party or an act of God, or other cause beyond its reasonable control and which it could not have prevented by reasonable precautions, including failures or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment, hackers, failure of software and the like and such non-performance shall not be considered a breach of this Agreement or grounds for termination.

12. Authority to Perform

Each party confirms to the other that it has all requisite power and authority to execute, deliver and perform its obligations under the Agreement, and no approval authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under the Agreement.

13. Limitation of Liability

In the event that STRONGE shall be liable to Customer for any matter arising out of or in any way relating to the STRONGE Agreement, whether based on an action or claim in contract, tort, or otherwise, then the amount of damages recoverable against STRONGE shall not exceed the amount paid by Customer to MLP for its license to use EPES in the prior twelve month period for the specific service which is the subject of the action or claim. STRONGE shall not be liable for indirect, special, consequential or punitive damages of any party, including third parties. Further, no cause of action that accrued more than two years prior to the filing of a suit alleging such cause of action may be asserted against STRONGE.

14. Disclaimer of Warranties

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF STRONGE SET FORTH IN THIS AGREEMENT, STRONGE DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESSED OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

15. Miscellaneous

15.1 This Agreement represents the entire agreement of STRONGE and the Customer. This Agreement supersedes any earlier agreement, whether oral or written.

15.2 No amendment to this Agreement shall be binding upon either party unless reduced to writing and duly executed by each of the parties in the same manner as execution of this Agreement.

- 15.3 Customer shall not assign, transfer, license, sub-license or any of its rights or obligations under the Agreement without the prior written consent of STRONGE.
- 15.4 This Agreement shall be governed by and construed according to the laws of the Commonwealth of Virginia as applicable to agreements executed in and to be wholly performed within such State, excluding its principles of conflict of laws. In the event of any dispute arising under the Agreement, Customer irrevocably submits to the exclusive jurisdiction of the courts located in James City County, Commonwealth of Virginia and Customer waives any objection thereto based on lack of venue, forum non-conveniens or any similar-type grounds.
- 15.5 No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. Waivers must be in writing and signed by the party waiving its rights.
- 15.6 If any provision of this Agreement is held by a court of competent jurisdiction to be void, such provision shall be deemed severed from the remainder of the Agreement, and unless the intent of the Agreement is materially affected by the invalidity, the remaining provisions of this Agreement will remain in full force and effect.
- 15.7 In the event of termination or expiration of this Agreement, Paragraphs 8, 9, 10, 13, 14, 15.3 and 15.4 shall survive.

Agreed to and accepted this ___ day of _____, 20__:

STRONGE & Associates Educational Consulting, LLC

Randolph Township

By: 

By: _____

Name: James H. Stronge

Name:

Title: Stronge & Associates, Educational Consulting, LLC

Title:

Address: _____



Subscription Agreement and Statement of Work

Including the Stronge Effectiveness Performance
Evaluation System Bundle Pricing

Randolph Township

My Learning Plan, Inc.
Subscription Agreement and Statement of Work (“Agreement”)

My Learning Plan, Inc. (“MLP”) will provide Randolph Township (“Customer”) with a Web-based online educator observation and appraisal management system (OASYS) through MLP’s Web site, located at www.MyLearningPlan.com. OASYS will facilitate the maintenance and tracking of the educator evaluation process. OASYS Management System (“OMS”) is a web-based application, available only to subscribers under this Agreement, which is used to track, manage and report on the educator evaluation process. The provision of these services to Customer shall be subject to the contents of this Agreement.

1.0 OASYS System (“OMS”) Features:

- Custom Evaluations
- Component Manger
- Scheduler
- Form Designer
- Evaluation Type Management
- Reporting

2.0 My Learning Plan, Inc. (MLP) Responsibilities:

During the term of this Agreement, MLP agrees to perform as follows:

- Use all commercially reasonable efforts to provide 24 hour/seven-day access to OMS:
- Integrate OMS for the Customer for all active users within the MyLearningPlan.com Web site.
- Provide unlimited support for requests received through the website www.MyLearningPlan.com to System Operator and end-users.
- Respond to emergency calls placed by System Operator during normal business hours, under normal circumstances, within four hours.
- Maintain MLP’s Web and database server(s) and associated hardware that supports OMS.
- Provide reasonable and customary security for OMS, mylearningplan.com website and database server(s).

2.1 As part of the setup and configuration, MLP agrees to:

- Set-up OMS for the Customer on the MyLearningPlan.com Web site.
- Set-up and install, for use in MyLearningPlan OASYS, the rubrics, forms, templates and the like (collectively “Forms”) set forth in Schedule A on the MyLearningPlan.com website.
- Provide training to Customer’s System Operator and assist with configuration tasks.

3.0 Customer’s Responsibilities:

During the term of this agreement, Customer agrees to perform as follows:

- Designate at least one of Customer’s employees (or consultants) as system operator (“System Operator”). System Operator will act as the liaison for all administrative and

technical communications between MLP and Customer. The System Operator will be granted special administrator rights and will be responsible for configuring OMS for Customer (user account, access rights, forms, approvals, etc.).

Preparing, drafting and/or editing the final version of all Forms used with OMS.

4.0 Subscription Agreement:

This Subscription Agreement provides Customer the right to use OMS and Updates and Enhancements and associated documentation and reference material during the term of this Subscription Agreement. OMS shall be used by Customer solely for Customer's own internal use and is subject to the rights and requirements specified in this Agreement. MLP may provide updates and enhancements ("Updates and Enhancements") which MLP at its sole discretion deems to be logical improvements to the OMS previously supplied to Customer under this Agreement, and which MLP makes generally available to other Customers, and does not separately price or market. Any Updates and Enhancements that are provided to Customer shall be deemed part of the OMS and shall be used in accordance with the requirements and obligations set forth in this Agreement.

5.0 Term and Termination:

This agreement shall for be for a term of one year, commencing on the date set forth below (the "Effective Date"), and shall automatically renew for successive one-year terms unless one party notifies the other of its intention not to renew the agreement at least 30 days prior to the expiration of the then current term.

Either party may terminate this agreement for any reason with 90 days written notice. However, upon the material breach of this Agreement by one party, the other party may terminate this Agreement immediately. If the Customer terminates this Agreement, MLP will refund only the prorated portion of the Annual User Subscription Fees remaining under the Agreement. Upon the termination or expiration of this Agreement for any reason, MLP will promptly remove the System Operator and all registered users of the Customer from the database and will cease to provide technical support and maintenance.

6.0 Fees:

In consideration for the services provided by MLP to Customer, Customer shall pay to MLP the fees set forth on Schedule B. Each access code provided by MLP to Customer shall be deemed a "User". The annual price paid by Customer is the Annual User Subscription Fee. Customer shall pay to MLP all fees upon the execution and delivery of this Agreement. In the event that Customer automatically renews this agreement, Customer shall pay to MLP the Annual User Subscription Fee within 30 days from the annual anniversary of the Effective Date of this agreement. Within 30 days from the anniversary of the Effective Date, MLP will send Customer an invoice that will reflect the addition or deletion of Users and changes to the Annual User Subscription Fee, if any.

7.0 Ownership and Confidentiality

OMS, the related database, Web site source code, any programs, systems, data, and materials furnished by MLP to Customer including all trademarks, trade names, logos, characters and the look and feel of MLP's Internet site, including without limitation, all copyrights, trademarks, trade names and other proprietary rights inherent therein or appurtenant thereto, is and will remain the property of MLP and Customer will have no rights or interests in this except as provided in this Agreement. In addition to obtaining a license from Stronge & Associates Educational Consulting, LLC. to use the STRONGE EFFECTIVENESS PERFORMANCE EVALUATION SYSTEM ("EPES"), Customer will acquire, license or otherwise, obtain permission to use software, rubrics, forms, templates and the like in conjunction with MLP OASYS Management System (OMS) from the appropriate third parties.

7.1 Customer's and its User's data is and will remain the property of Customer and, upon the termination of this Agreement for any reason, such data will be returned by MLP to Customer, subject to Customer's payment of all fees due and owed by Customer to MLP.

7.2 Each party agrees that all information communicated to it by the other will be held in strict confidence and will be used only for the purposes of this Agreement and that no such information ("Information") will be disclosed by the party receiving the Information ("Recipient"), its agents or employees without the prior written consent of the party disclosing the Information ("Disclosing Party") unless the Information a) is now or hereafter becomes, through no act or omission on the part of Recipient, generally known or available, or is now or later enters the public domain through no act or omission on the part of Recipient; b) was acquired by Recipient independently of this Agreement and without restriction as to use or disclosure; c) is hereafter rightfully furnished to Recipient by a third party, without restriction as to use or disclosure; d) is information which Recipient can document was independently developed by Recipient; e) is required to be disclosed pursuant to law or regulation, provided Recipient gives notice to Disclosing Party of such required disclosure; or f) is disclosed with the prior written consent of Disclosing Party.

7.3 Customer's data will not be utilized by MLP for any purpose other than that of rendering services to Customer under this Agreement, nor will Customer's Data or any part thereof be disclosed to third parties by MLP, its employees or agents except as provided for in Paragraph 7.4 . However, each party agrees that Customer may disclose Customer Data as required or at its discretion.

7.4 If in accordance with **7.2 e)** if the Recipient is required to disclose any portion of the Information or MLP is required by law to disclose any portion of Customer Data, whether with or without a guarantee of confidentiality, MLP or the Customer as applicable will notify the other in writing within two (2) business days of learning of the requirement to disclose Information or Customer Data.

7.5 Customer or its successor is obligated to keep MLP's information confidential for five (5) years after the termination of this Agreement.

8.0 Non-Performance in Certain Cases:

As with all Internet-based services, access to the MLP OASYS Management System (OMS) is sometimes interrupted due to conditions beyond MLP's control. MLP shall be excused from performance of this agreement, in whole or in part, as a result of delays caused by Customer, a third party or an act of God, or other cause beyond its reasonable control and which it could not have prevented by reasonable precautions, including failures or fluctuations in electrical power, heat, light, air conditioning or telecommunications equipment, hackers, failure of software and the like and such non-performance shall not be considered a breach of this Agreement or grounds for termination.

9.0 Authority to Perform:

Each party confirms to the other that it has all requisite power and authority to execute, deliver and perform its obligations under this Agreement, and no approval authorization or consent of any governmental or regulatory authority is required to be obtained or made by it in order for it to enter into and perform its obligations under this Agreement.

10. Limitation of Liability

In the event that MLP shall be liable to Customer for any matter arising out of or in any way relating to this Agreement, whether based on an action or claim in contract, tort, or otherwise, then the amount of damages recoverable against MLP shall not exceed the amount paid by Customer to MLP in the prior twelve month period for the specific service which is the subject of the action or claim. MLP shall not be liable for indirect, special, consequential or punitive damages of any party, including third parties. Further, no cause of action that accrued more than two years prior to the filing of a suit alleging such cause of action may be asserted against MLP.

11. Disclaimer of Warranties:

EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF MLP SET FORTH IN THIS AGREEMENT, MLP DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESSED OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12.0 Miscellaneous

This Agreement represents the entire agreement of both parties involved, MLP and the Customer. This Agreement supersedes any earlier agreement, whether oral or written.

12.1 No amendment to this Agreement shall be binding upon either party unless reduced to writing and duly executed by each of the parties in the same manner as execution of this Agreement.

12.2 Customer shall not assign, transfer, license, sub-license or any of its rights or obligations under this Agreement without the prior written consent of MLP.

12.3 This Agreement shall be governed by and construed according to the laws of the State of New York as applicable to agreements executed in and to be wholly performed within such State, excluding its principles of conflict of laws. In the event of any dispute arising under this

Agreement Customer irrevocably submits to the exclusive jurisdiction of the courts located in Suffolk County, State of New York and Customer waives any objection thereto based on lack of venue, forum non-conveniens or any similar-type grounds.

12.4 No delay or omission by either party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any party of any breach or covenant shall not be construed to be a waiver of any succeeding breach or any other covenant. Waivers must be in writing and signed by the party waiving its rights.

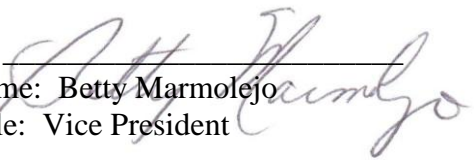
12.5 If any provision of this Agreement is held by a court of competent jurisdiction to be void, such provision shall be deemed severed from the remainder of the Agreement, and unless the intent of the Agreement is materially affected by the invalidity, the remaining provisions of this Agreement will remain in full force and effect.

12.6 In the event of termination or expiration of this Agreement, Paragraphs 7.0, 7.1, 7.2, 7.4, 7.5, 10, 11, 12.2 and 12.3 shall survive.

Agreed to and accepted this __ day of _____, 20__:

MY LEARNING PLAN, INC.

Randolph Township

By: 
Name: Betty Marmolejo
Title: Vice President

By: _____
Name: _____
Title: _____
Address: _____

SCHEDULE A

Customer through its Agreement with Stronge & Associates Educational Consulting, LLC (“STRONGE Agreement”) has obtained permission to use software, rubrics, forms, templates and the like from the **STRONGE EFFECTIVENESS PERFORMANCE EVALUATION SYSTEM (“EPES”)**, upon payment of the Annual User Subscription Fee, in conjunction with MLP OASYS Management System (OMS) As part of the setup and configuration, MLP agrees to set-up and install forms and rubrics for the Stronge Teacher, Principal, Educational Specialist and Superintendent Effectiveness Performance Evaluation Systems.

SCHEDULE B

FEES

One Time Fee		
	MLP OASYS Setup and Configuration Fee	\$2,000 Fee waived through 8/15/12
Annual Licensing Fees		
521	MLP OASYS Annual Licensing Fee \$24 per MLP active instructional license (Includes annual license fee for the Stronge Effectiveness Performance Evaluation System (“EPES”)*	12,504

***Note:** Pricing information does not include training on the Stronge Effectiveness Performance Evaluation System. Please contact Stronge & Associates, Educational Consultants LLC for training options and pricing.