**My Learning Plan Inc.**
**Agreement and Statement of Work**
**MLPOASYS Including the Stronge Effectiveness Performance Evaluation System Bundle Pricing**

This Agreement and Statement of Work ("Agreement") entered into between My Learning Plan Inc. ("MLP"), a corporation having its principal offices at 8586 Potter Park Drive, Sarasota, Florida 34238, and the RANDOLPH TOWNSHIP BOARD OF EDUCATION, ("CUSTOMER") determines the rights and licenses granted hereunder by MLP.

NOW, THEREFORE, the parties agree as follows:

MLP will provide CUSTOMER with the Web-based SaaS product:
  I.   Online Educator Observation and Appraisal Management System ("MLPOASYS") through MLP's Web site, located at www.MyLearningPlan.com. MLPOASYS will facilitate the maintenance and tracking of the educator evaluation process. MLPOASYS 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 ("Services") to CUSTOMER shall be subject to the contents of this Agreement and Statement of Work.

**1.0 System Features:**
  • Custom Evaluations
  • Component Manager
  • 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:

  • MLP will perform an initial set-up of MLPOASYS on the My Learning Plan Inc. web site.
      ▪ Integrate MLPOASYS for CUSTOMER for all active Users within the MyLearningPlan.com Web site.

![MLPOASYS℠ logo]

- Assist CUSTOMER staff in understanding the configuration options within the system, and to help with the initial setup. MLP will work with CUSTOMER prior to and after implementation and roll-out of the system to do the following tasks:

  1) Understand CUSTOMER's evaluation process, as described to MLP by CUSTOMER leaders.

  2) Build a basic MLPOASYS site:

     a. Provide CUSTOMER with a template for adding Users with Evaluation Type assignments. An evaluation type in MLPOASYS is a group of "evaluees" or a way to describe a sub-set of personnel. All members of the same evaluation type share the same standard evaluation requirements. Examples of evaluation types may include: First Year Teachers, Tenured Teachers, Library Media Specialists, Counselors, Teachers in Need of Improvement, Custodians, Principals, etc.

     b. Upload the CUSTOMER-completed template to create User accounts.

     c. Develop CUSTOMER-specified forms as Templates in the site.

     d. Develop Summative/Scoring Forms as defined by CUSTOMER during configuration.

  3) Introduce CUSTOMER to the basic MLPOASYS site during a Configuration Meeting (via remote screen-sharing), outlining what has been created, what needs to still be done by CUSTOMER and how it can be done. The MLP support representative conducting the Configuration Meeting will follow-up with a written description of the items to be completed by CUSTOMER.

  4) Facilitate a Post Configuration Meeting (via remote screen-sharing) to review the CUSTOMER's completion of their responsibilities necessary to roll out the system to staff, and to address any other questions that arise during the initial introduction to the system.

  5) Provide demonstration accounts to enable CUSTOMER representatives to test site configuration prior to rolling the system out to staff.

  6) My Learning Plan Inc. does not accept any liability, arising from the inaccuracy of scoring, completeness, use of or reliance on the information contained in the extract of data from MLPOASYS.

- Use all commercially reasonable efforts to provide 24 hour/seven-day access to MLPOASYS.

- Respond to support requests received through our website from System Operator and end-users during normal business hours; provided that MLP shall be permitted a four-hour response time.
- 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 MLPOASYS.
- Provide reasonable and customary security for My Learning Plan Inc. websites and database server(s).

**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 MLPOASYS for CUSTOMER (user account, access rights, forms, approvals, etc.).

- The System Operator shall provide to MLP in an electronic format selected by MLP's technical support all required account information for the Users of the CUSTOMER for completion of one-time batch import.
- Provide MLP with the required data to build the site:
    - Users, complete with Evaluation Type assignments (on an Excel template provided by MLP)
    - Customer-specified forms
    - Scoring needs defined for each Evaluation Type

- Participate in two configuration meetings, guided by a MLP support Team representative.
- Review and verify the accuracy of all site configurations, including but not limited to, forms, form settings and scoring calculations and configurations, regardless of whether these items are configured by the CUSTOMER directly, or by My Learning Plan Inc. staff, at the request of the CUSTOMER.
- Review and verify all configuration items enabled in their site. This includes verifying the accuracy of the scoring computations as well as the scoring configurations as they pertain to the requirements of your organization and /or state.
- Monitor and manage State or CUSTOMER changes to the evaluation process, and manage/modify configuration and forms to comply with those changes.

**MLPOASYS**℠

- The CUSTOMER is responsible for making any changes after initial configuration. MLP support team members are always available to provide direction, if necessary.
- The CUSTOMER is ultimately responsible for all configurations of forms, scoring and reporting.
- Ensure the CUSTOMER has the obtained the rights to use any copy written materials, including but not limited to, evaluation frameworks and/or rubrics uploaded into the system by CUSTOMER.

## 4.0 Subscription Agreement:

This Agreement grants, and CUSTOMER accepts, a nonassignable, nontransferable, non-exclusive subscription to use MLPOASYS. Updates and Enhancements (including any revisions, derivations, and upgrades), and associated documentation and reference material during the term of this Agreement.  The web-based SaaS product, MLPOASYS, procured under this agreement 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 MLPOASYS, and 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 MLPOASYS, and shall be used in accordance with the requirements and obligations set forth in this Agreement.

## 5.0 Term and Termination:

The initial term of this Agreement shall for be for one year, commencing on the Effective Date ("Subscription Start Date"), unless earlier terminated by the mutual agreement of the parties. The Effective Date commences upon the date of site configuration, reflected on the CUSTOMER invoice, and may be extended for renewal terms of one (1) year (each a "Renewal Term") by mutual written agreement by both parties.

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 upon five (5) business days written notice.  If CUSTOMER or MLP terminate 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 A. 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 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:**

MLPOASYS, including but not limited to 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 subscription or otherwise, obtain permission to use software, rubrics, forms, templates and the like in conjunction with MLPOASYS 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)** 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 five (5) business days of learning of the requirement to disclose Information or CUSTOMER Data.

**7.5** MLP does not require nor manage personally identifiable information; however, we may house personally identifiable information that is provided or uploaded voluntarily by the CUSTOMER or their authorized end users of their subscription.  MLP is not liable for any personally identifiable data that is voluntarily uploaded into our systems.

**7.6** 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 MLPOASYS is sometimes interrupted due to conditions beyond MLP's control. MLP shall be excused from the brief performance of this Agreement, i.e., five (5) business days or less, 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.

**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.  As an optional consideration, CUSTOMER may pay the surcharge, as noted in Schedule A, to increase the amount of damages recoverable against MLP to

$2,000,000.00 (two million dollars). Neither party shall 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 either party.

My Learning Plan Inc. does not accept any liability, arising from the inaccuracy of scoring, completeness, use of or reliance on the information contained in the extract of data from MLPOASYS.

## 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

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 MLPOASYS. As part of the setup and configuration, MLP agrees to set-up and install forms and rubrics for the procured Stronge Teacher, Principal, Educational Specialist and Superintendent Effectiveness Performance Evaluation Systems as indicated in Schedule A.

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** Neither party shall assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the other party which consent shall not be unreasonably withheld.

**12.3** This Agreement shall be governed by and construed according to the laws of the State ofNew Jersey.  In the event of any dispute arising under this Agreement CUSTOMER irrevocably submits to the exclusive jurisdiction of the courts located in Morris County, State of New Jersey

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 contrary to law, 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, 7.6, 10, 11, 12.2, and 12.3 shall survive.

Agreed to and accepted by:

**MY LEARNING PLAN INC.**                    **RANDOLPH TOWNSHIP BOARD OF EDUCATION**

Signature: _____          Signature: _____

Print Name: _____          Print Name: _____

Date: _____          Date: _____

# SCHEDULE A

## FEES

| | | |
|---|---|---|
| **District-Wide Annual Subscription Fees\*** | | |
| **QTY** | **DESCRIPTION** | **COST** |
| 520 | MLPOASYS Annual Subscription Fee Instructional User $24 per FTE | **$12,480** |
| 22 | MLPOASYS Annual Subscription Fee Non Instructional User $24 per FTE | **$528** |
| | Surcharge for Increased Limitation of Liability | **$1,000** |
| | **TOTAL:** | **$14,008** |

**Note**: *Includes annual subscription fee for the Stronge Effectivness Performance Evaluation System ("EPES").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.

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FFT Exh.5, 9-16-14