

REGISTRO DE CONTRATOS
TOMO 22 PAGINA 67
CONTRATO NUM. 2013-000375

Master Subscription Agreement

This Agreement is entered into by and between The rSmart Group, Inc., located at 1375 N. Scottsdale Road, Suite 480, Scottsdale, Arizona 85257 ("we," "us," "our" or "ours") and the "Client" identified in the Proposal ("you," "your" or "yours"). This Agreement consists of the terms and conditions contained in this agreement and the rSmart SaaS Service Level Agreement, Support Services Guidelines, Proposal, Service Description or other documents incorporated herein by reference, collectively the "Agreement."

IN APPEARANCE

--FIRST PARTY: rSmart represented by Tom Chapman,
in exercise of the duties and power conferred upon him as an Officer of rSmart.

--SECOND PARTY (CLIENT): The Mayagüez Campus of the University of Puerto Rico, represented by its Chancellor, Jorge Rivera Santos,
in exercise of the duties and powers conferred upon him by the Law of the University of Puerto Rico, established by University Rules and regulations, approved January 20, 1966..

1. The Services

You have asked us to provide certain Consulting Services, Support Services and/or SaaS Services, collectively the "Service(s)". We will provide these Services according to the information you provided and options you selected, as identified in the Proposal. The Services will be provided according to this Agreement and the then-current versions of the following:

1. rSmart SaaS Service Level Agreement
2. Support Services Guidelines
3. Proposal

This Agreement constitutes a Consulting Services Agreement and as such any clause referring to the SaaS system does not apply.

2. Consulting Services

To the extent the solution you've selected calls for Consulting Services, the following terms and conditions in this section apply.

2.1 Work Orders. From time to time during the Term of this Agreement, the parties may enter into certain written Work Orders, which shall describe Consulting Services to be carried out by us, the specifications for such Consulting Services, and the timing and payment of the Fees by you. Each such Work Order shall be signed by the parties, and hereby incorporates by reference all the terms of this Agreement. In consideration of your performance hereunder including the timely payment to us of the Fees, we agree to use our commercially reasonable efforts to complete each Work Order. The manner and means by which we choose to complete Work Orders shall be at our sole discretion and control.

2.2 Delivery and Sign-Off. Upon our completion of Consulting Services we will

present to you our completed work along with a sign-off document that includes a written overview of our work and how that work meets the specifications detailed in the Work Order. You will have 5-business days from the time you receive the sign-off document to verify that we have delivered the agreed upon Consulting Services or to identify deficiencies and provide us with written notice of those deficiencies. If we do not receive written notice of any deficiencies within the 5-business day period the Work Order will be deemed accepted and completed. In the event you provide us with timely notice of deficiencies we will cooperate with you to evaluate the Work Order and determine the best approach for achieving a mutually satisfactory result.

2.3 Modifications to Work Orders. In the event that it becomes desirable or necessary to modify any Work Order at any time during the performance thereof, the Order and shall specify the details of the modifications to be made and any changes to Consulting Fees.

3. Support Services

To the extent the solution you've selected calls for Support Services, then we will provide such services as described in the Support Services Guidelines.

4. SaaS Services

To the extent the solution you've selected calls for SaaS Services, the following terms and conditions in this section apply along with the terms and conditions of rSmart SaaS Service Level Agreement.

4.1 Your Responsibilities.

(a) Data and Usage. You shall (i) be responsible for End Users' compliance with this Agreement, (ii) be responsible for the accuracy, quality and legality of Your Data and of the means by which you acquired Your Data, (iii) use commercially reasonable efforts to prevent unauthorized access to or use of the Services, and notify us promptly of any such unauthorized access or use, and (iv) use the Services only in accordance with the Agreement and applicable laws and government regulations. You shall not (a) make the Services available to anyone other than End Users, (b) sell, resell, rent or lease the Services, (c) use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (d) use the Services to store or transmit Malicious Code, (e) interfere with or disrupt the integrity or performance of the Services or third-party data contained therein, or (f) attempt to gain unauthorized access to the Services or their related systems or networks.

(b) Usage Limitations. Services may be subject to other limitations, including but not limited to, limits on disk storage space, on the number of End Users, etc. The specifics of these limitations are described in the business terms of your Proposal. These limitations may be extended as required by amendment to this Agreement.

(c) Your accounts are your responsibility. The Service allows you to set up accounts for use by your institution. You are responsible for all activity occurring via these accounts. You should ensure that all passwords for your accounts are kept confidential, because you will be responsible for any unauthorized use. You must also ensure that your accounts are not used in any way contrary to the rSmart SaaS Service Level Agreement or in any way that is contrary to law.

4.2 Our Responsibilities.

(a) **Service Levels.** We will provide SaaS Services to you in accordance with the rSmart SaaS Service Level Agreement and support you in accordance with the Support Service Guidelines.

(b) **Our Protection of Your Data.** We shall maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data. We shall not (a) modify Your Data, (b) disclose Your Data except as compelled by law or as expressly permitted in writing by you, or (c) access Your Data except to provide the Services and prevent or address service or technical problems, or at your request in connection with customer support matters.

(c) **FERPA.** The parties acknowledge that (a) your Data may include personally identifiable information from education records that are subject to FERPA ("FERPA Records"); and (b) to the extent that your Data includes FERPA Records, we will be considered a "School Official" (as that term is used in FERPA and its implementing regulations) and will comply with FERPA.

(d) **Your data and trademarks belong to you.** Any data that you provide to us may be used by us to provide the Services, and that data shall be treated as Confidential Information. rSmart may also display your trademarks or logos (in the form provided by you) on a customer reference page or otherwise to provide the Service. This Agreement does not assign or transfer any intellectual property right to or from you or us.

(e) **rSmart is not responsible for user activity.** The Service allows you to communicate with your End Users or other users of the Service. You acknowledge that we will have no liability, obligation or responsibility for any such communication and interaction. You acknowledge that we have the right to exclude certain End Users from use of the Service, based on the rSmart SaaS Service Level Agreement, Support Services Guidelines or any other reasonable determination that such End User's use of the Service is inappropriate or likely to cause liability to us. However, we are not responsible for End Users' behavior, whether or not we exercise that right.

5. Term & Termination

5.1 **Term.** This Agreement will commence on the Effective Date and shall continue in effect until the termination of this Agreement by either party as herein below provided or until August 19, 2013.

5.2 **Termination for Cause.** Either party may terminate this Agreement for the material breach of the other party which breach has remained uncured for thirty (30) days following written notice to the breaching party.

5.3 **Auto Renewal of SaaS & Support Services.** (Does not apply to these agreement) At the end of the Initial SaaS & Support Term and each renewal term, the SaaS & Support Services will automatically renew for an additional term of twelve (12) months at our then current rates. If either party does not want the SaaS & Support Services to renew, then it must notify the other party in writing at least 60 days prior to the end of the then current term. This notice of non-renewal will be effective upon the conclusion of the then current term.

5.4 SaaS Services

(a) **Termination Assistance for SaaS Services.** In the event of any expiration or termination of this Agreement and complete and full payment of all outstanding invoices and amounts due to us by you, we shall: (i) continue to

EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY AS TO ANY MATTER WHATSOEVER. IN PARTICULAR, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT ARE EXPRESSLY EXCLUDED.

7.2 Limitation of Liability. IN NO EVENT SHALL WE BE LIABLE TO YOU OR ANY OTHER PARTY FOR ANY LOSS OF USE, INTERRUPTION OF BUSINESS OR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS) REGARDLESS OF THE FORM OF ACTION WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF WE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL OUR CUMULATIVE LIABILITY HEREUNDER EXCEED THE GREATER OF ALL FEES ALREADY PAID TO US AS OF THE DATE OF THE ASSIGNMENT OF SUCH LIABILITY OR TEN THOUSAND DOLLARS (\$10,000.00).

7.3 Indemnity By Us. We shall at all times during and after the Term fully indemnify, defend and hold harmless you and your subsidiaries, agents, officers and employees (the "Your Indemnified Parties"), from and against any and all claims, demands, threats, suits or proceedings, including, without limitation associated attorneys' fees and court costs, settlement amounts and judgments (collectively, "Claims") which arise out of, relate to, or are based on: (a) any infringement of any U.S. patent, copyright or trademark by the Services as developed and delivered by us; or (b) any violation by us of any laws, rules, or regulations. You hereby agree to give us prompt, written notice of each such Claim, and to cooperate with us, and to secure the cooperation of Your Indemnified Parties, regarding our defense or settlement of each such Claim. You may participate in the defense or settlement thereof through counsel of our own choosing at your expense.

7.4 Indemnity By You. You shall at all times during and after the Term fully indemnify, defend and hold harmless us and our subsidiaries, agents, officers and employees (the "Our Indemnified Parties"), from and against any and all Claims which arise out of, relate to, or are based on: (a) any infringement of any U.S. patent, copyright or trademark or the defamation or invasion of privacy of any third party by Client Materials as delivered by you; or (b) any violation by you of any laws, rules, or regulations. We hereby agree to give you prompt, written notice of each such Claim, and to cooperate with you, and to secure the cooperation of Our Indemnified Parties, regarding your defense or settlement of each such Claim. We may participate in the defense or settlement thereof through counsel of our own choosing at our expense.

7.5 Sole Remedy. The parties understand and agree that the remedies provided in this section are each party's sole remedy for any infringement of third party rights. Without limiting the generality of the foregoing, you understand and agree that we shall have no obligations with respect to third party software.

8. Confidential Information

8.1 Obligations. Each party will: (a) protect the other party's Confidential Information with the same standard of care it uses to protect its own Confidential Information; and (b) not disclose the Confidential Information, except to Affiliates, employees and agents who need to

know it and who have agreed in writing to keep it confidential. Each party (and any Affiliates, employees and agents to whom it has disclosed Confidential Information) may use Confidential Information only to exercise rights and fulfill its obligations under this Agreement, while using reasonable care to protect it. Each party is responsible for any actions of its Affiliates, employees and agents in violation of this Section.

8.2 Exceptions. Confidential Information does not include information that: (a) the recipient of the Confidential Information already knew; (b) becomes public through no fault of the recipient; (c) was independently developed by the recipient; or (d) was rightfully given to the recipient by another party.

8.3 Required Disclosure. Each party may disclose the other party's Confidential Information when required by law but only after it, if legally permissible: (a) uses commercially reasonable efforts to notify the other party; and (b) gives the other party the chance to challenge the disclosure.

9. Intellectual Property Rights

9.1 Intellectual Property Rights. Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's content or any of the other's intellectual property. As between the parties, you own all Intellectual Property Rights in Your Data, and we own all Intellectual Property Rights in the Services.

10. Your Data and Trademarks

10.1 Your data and trademarks belong to you. Any data that you provide to us may be used by us to provide the Services; and that data shall be treated as Confidential Information. rSmart may also display your trademarks or logos (in the form provided by you) on a customer reference page or otherwise to provide the Service. This Agreement does not assign or transfer any intellectual property right to or from you or us.

11. Dispute Resolution

11.1 Governing Law. This Agreement shall be governed in all respects by the laws of the United States of America. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

11.2 Arbitration. Any dispute between the parties regarding this Agreement shall be resolved through binding arbitration as follows:

(a) Selection. A single arbitrator engaged in the practice of law, who is knowledgeable about the open source software industry, shall conduct the arbitration under the then-current Commercial Dispute Resolution Rules of the American Arbitration Association ("AAA"). The arbitrator shall be selected in

accordance with AAA procedures from a list of qualified people maintained by the AAA. The arbitration shall be conducted in Phoenix, Arizona, and shall

13.9 "FERPA" means the Family Educational Rights and Privacy Act (20 U.S.C. 1232g) and the Family Educational Rights and Privacy Act Regulations (34 CFR Part 99), as amended or otherwise modified from time to time.

13.10 "Intellectual Property Rights" means current and future worldwide rights under patent law, copyright law, trade secret law, trademark law, moral rights law, and other similar rights.

13.11 "Our Indemnified Parties" shall have the meaning assigned in Subsection 7.

13.12 "SaaS Services" means collectively the web, hosting and data services provided under the Services Level Agreement.

13.13 "Service(s)" means the Applications for Education Services provided by us and used by you under this Agreement. The Services are further described here: rSmart SaaS Service Level Agreement, Support Services Guidelines, and Proposal.

13.14 "Specifications" shall mean those specifications for services described as such in a Work Order.

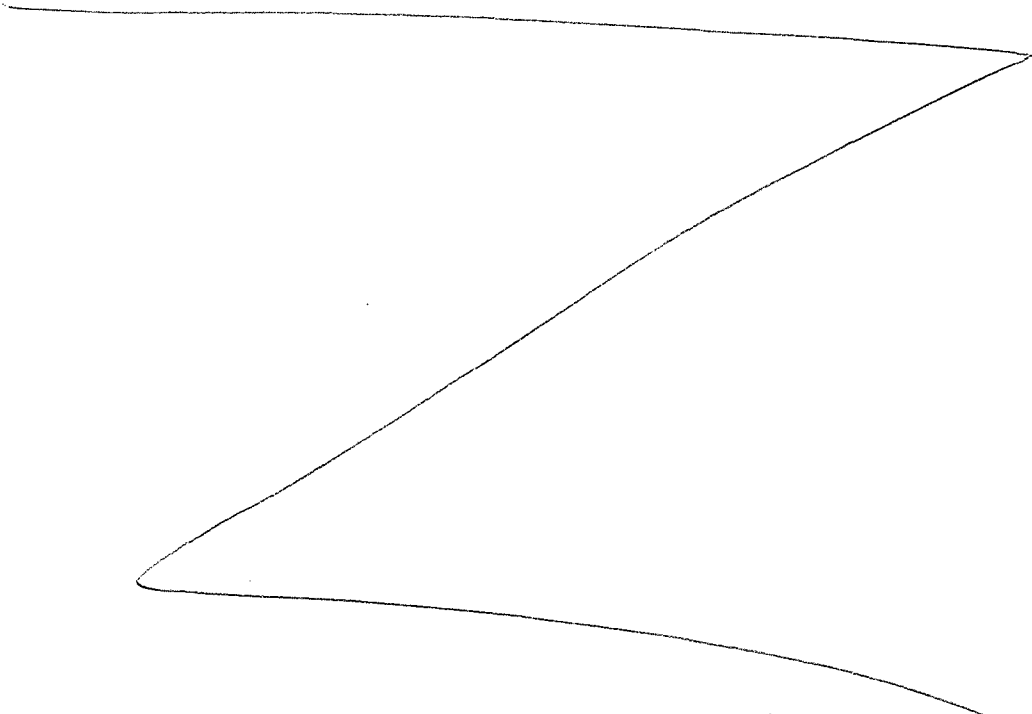
13.15 "Support Services" means collectively the services and technology related to application delivery and support provided under the Support Services Guidelines and rSmart SaaS Services Level Agreement.

13.16 "Term" means the term of this Agreement, which begins on the Effective Date and continues until the earlier of: (a) the end of the applicable term for all of the Services or (b) the Agreement is terminated as set forth herein.

13.17 "Work Order" shall have the meaning assigned to it in Subsection 2.1 ("Work Orders").

13.18 "Your Data" means data, including email, provided, generated, transmitted or displayed via the Services by Customer or End Users or any other information that you provide us.

13.19 "Your Indemnified Parties" shall have the meaning assigned in Subsection 7.



Pricing

PROPOSED SERVICES	HOURS	FEES
Phase 1 Consulting Services	100-120	\$20,000 - \$24,000
Estimated Travel		\$3,000 - \$4,500
Total		\$23,000 - \$28,500

Agreement

Effective Date: February 19, 2013


End Date: August 19, 2013

The parties have signed below to indicate their acceptance of the terms of this Agreement:

rSmart

University of Puerto Rico at Mayagüez

By: _____

By: 

Name: Tom Champman

Name: Dr. Jorge Rivera Santos 

Title: Chief Financial Officer

Title: UPRM Chancellor