

Revised waf 2015 may

MASTER "SOFTWARE AS A SERVICE" MANAGED SERVICES AGREEMENT

This agreement ("Agreement") is entered into, to be effective as of 15th /April/2015 ("Effective Date"), by and between **Sacred Heart College** ("Customer"), with its principal place of business located at **Thevara, Kochi, Kerala- 682 013** and **EMSTEM TECHNOLOGIES (P) Ltd** ("Service Provider"), with its principal place of business located at KSRTC Road, Perumbavoor, Ernakulam Dist., Kerala-683 542.

RECITALS

WHEREAS, Customer requires premise hosted third-party "software as a service" (the "Services," as further described herein) with respect to certain of its information technology needs;

WHEREAS, Customer requested a proposal from Service Provider for such Services;

WHEREAS, Service Provider has experience and expertise in the business of providing the Services;

WHEREAS, Service Provider submitted a proposal to Customer to perform such Services on behalf of Customer;

WHEREAS, based on Service Provider's superior knowledge and experience relating to such Services, Customer has selected Service Provider to manage and provide the Services;

WHEREAS, Service Provider wishes to perform the Services and acknowledges that the successful performance of the Services and that the security and availability of Customer's data ("Customer Data," as further described herein) are critical to the operation of Customer's business; and,

WHEREAS, Service Provider has agreed to provide the Services to Customer, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1. The Services.

1.1 Purpose; Term. This Agreement sets forth the terms and conditions under which Service Provider agrees to license certain hosted "software as a service" change management, technology upgrades, and training necessary for Customer's productive use of such software (the "Services"), as further set forth on an Exhibit A (sequentially numbered) in the form of the Exhibit A attached hereto or in other statements of "software as a service" work containing substantially similar information and identified as an Exhibit A. The Agreement and each Exhibit A shall remain in effect unless terminated as provided herein.

1.1.1 Authorized Users. Unless otherwise limited on an Exhibit A, Customer and any of its employees, agents, contractors, or suppliers of services that have a need to use the Services for the benefit of Customer shall have the right to operate and use the same.

1.2 Control of Services. The method and means of providing the Services shall be under the exclusive control, management, and supervision of Service Provider, giving due consideration to the requests of Customer.

1.3 Time of Service Provider Performance of Services. For the term of the applicable Exhibit A, as the same may be amended, Service Provider shall provide the Services during the applicable Service Windows and in accordance with the applicable Service Levels, each as described in an Exhibit A, time being of the essence.

1.4 Backup of Customer Data. As a part of the Services, Service Provider will provide necessary guidance and procedures for data back up, The responsibility of data back up lies with the customer and the customer is solely responsible for the Data and Data Backup.

1.5 Change Control Procedure. Customer may, upon written notice, request increases or decreases to the scope of the Services under an Exhibit A. If Customer requests an increase in the scope, Customer shall notify Service Provider, and, not less than Seven (7) business days (or other mutually agreed upon period) after receiving the request, Service Provider shall notify Customer whether or not the change has an associated cost impact. If Customer approves, Customer shall issue a change control, which will be executed by the Service Provider.

2. Terms

2.1 The term of an Exhibit A (the "Initial Term") shall commence on the Effective Date and continue for five years thereafter. Following the Initial Term, an Exhibit A shall automatically renew for successive Number of years terms (each, a "Renewal Term") until such time as Customer provides Service Provider with written notice of termination; provided, however, that: (a) such notice be given no fewer than sixty (90) calendar days prior to the last day of the then-current term; and, (b) any such termination shall be effective as of the date that would have been the first day of the next Renewal Term. "Term" shall collectively mean and include the Agreement terms represented by the Initial Term and the Renewal Term.

3. Services Levels.

3.1 Service Levels Reviews. Service Provider and Customer will meet as often as shall be reasonably requested by Customer, but no more than monthly, to review the performance of Service Provider as it relates to the Service Levels further described in Exhibit A.

4. Fees and Expenses. Customer shall be responsible for and shall pay to Service Provider the fees as further described in Exhibit A, subject to the terms and conditions contained therein. Any sum due Service Provider for Services performed for which payment is not otherwise specified shall be due and payable ten (10) days after receipt by Customer of an invoice from Service Provider

4.1 Billing Procedures. Unless otherwise provided for under an Exhibit A, Service Provider shall bill to Customer the sums due pursuant to an Exhibit A by Service Provider's invoice, which shall contain: (a) Customer purchase order number, if any, and invoice number; (b) description of Services rendered; (c) the Services fee or portion thereof that is due; (d); taxes, if any; and, (e) total amount due

5. Customer Resources and Service Provider Resources. In accordance with the terms set forth in Exhibit A, each party shall provide certain resources (Customer Resources and Service Provider Resources, as the case may be) to the other party as Customer and Service Provider may mutually deem necessary to perform the Services.

5.1 Customer Resources. If so described in an Exhibit A, where Customer provides resources (e.g., technology equipment) to Service Provider that are reasonably required for the exclusive purpose of providing the Services, Service Provider agrees to keep such resources in good order and not permit waste (ameliorative or otherwise) or damage to the same. Service Provider shall return the resources to Customer in substantially the same condition as when Service Provider began using the same, ordinary wear and tear excepted. Customer shall provide the Customer Resources, if any, described in an Exhibit A.

5.2 Service Provider Resources. In addition to any Service Provider Resources described in an Exhibit A, the Service Provider shall, at a minimum,

provide all of the resources necessary to ensure that the Services continue uninterrupted, considering the applicable Service Windows and Service Levels, that Customer Data is secure to the standards and satisfaction of Customer, and provide for an optimal response time for Customer's users of the Services.

6. Representations and Warranties.

6.1 Mutual Representations and Warranties. Each of Customer and Service Provider represent and warrant that:

- 6.1.1 it is a business duly incorporated, validly existing, and in good standing under the laws of its state of incorporation;
- 6.1.2 it has all requisite corporate power, financial capacity, and authority to execute, deliver, and perform its obligations under this Agreement;
- 6.1.3 this Agreement, when executed and delivered, shall be a valid and binding obligation of it enforceable in accordance with its terms;
- 6.1.4 the execution, delivery, and performance of this Agreement has been duly authorized by it and this Agreement constitutes the legal, valid, and binding agreement of it and is enforceable against it in accordance with its terms, except as the enforceability thereof may be limited by bankruptcy, insolvency, reorganizations, moratoriums, and similar laws affecting creditors' rights generally and by general equitable principles;
- 6.1.5 it shall comply with all applicable federal, state, local, international, or other laws and regulations applicable to the performance by it of its obligations under this Agreement and shall obtain all applicable permits and licenses required of it in connection with its obligations under this Agreement; and,
- 6.1.6 there is no outstanding litigation, arbitrated matter or other dispute to which it is a party which, if decided unfavorably to it, would reasonably be expected to have a potential or actual material adverse effect on its ability to fulfill its obligations under this Agreement.

6.2 By Service Provider. Service Provider represents and warrants that:

- 6.2.1 Service Provider is possessed of superior knowledge with respect to the Services;
- 6.2.2 Service Provider knows the particular purpose for which the Services are required;
- 6.2.3 the Services to be performed under this Agreement shall be performed in a competent and professional manner and in accordance with the highest professional standards;
- 6.2.4 Service Provider has the experience and are qualified to perform the tasks involved with providing the Services in an efficient and timely manner. Service Provider acknowledges that Customer is relying on Service Provider's representation of its experience and expertise, and that any substantial misrepresentation may result in damage to Customer;
- 6.2.5 the Services will achieve in all material respects the functionality described in an Exhibit A and the documentation of Service Provider, and that such functionality shall be maintained during the Term;

7. Non-Disclosure of Confidential Information. The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties.

7.1 Meaning of Confidential Information. For the purposes of this Agreement, the term "Confidential Information" shall mean all information and documentation of a party that: (a) has been marked "confidential" or with words of similar meaning, at the time of disclosure by such entity; (b) if disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing entity and marked "confidential" or with words of similar meaning; (c) with respect to information and documentation of Customer, whether marked "Confidential" or not, consists of Customer information and documentation included within any of the following categories: (i) policyholder, payroll account, agent, customer, supplier, or contractor lists; (ii) policyholder, payroll account, agent, customer, supplier, or contractor information; (iii) information regarding business plans (strategic and tactical) and operations (including performance); (iv) information regarding administrative, financial, or marketing activities; (v) pricing information; (vi) personnel information; (vii) products and/or services offerings (including specifications and designs); or, (viii) processes (e.g., technical, logistical, and engineering); or, (d) any Confidential Information derived from information of a party. The term "Confidential Information" does not include any information or documentation that was: (a) already in the possession of the receiving entity without an obligation of confidentiality; (b) developed independently by the receiving entity, as demonstrated by the receiving entity, without violating the disclosing entity's proprietary rights; (c) obtained from a source other than the disclosing entity without an obligation of confidentiality; or, (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by, through or on behalf of, the receiving entity).

7.2 Obligation of Confidentiality. The parties agree to hold all Confidential Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such Confidential Information to third parties other than employees, agents, or subcontractors of a party who have a need to know in connection with this Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. The parties agree to advise and require their respective employees, agents, and subcontractors of their obligations to keep such information confidential.

7.3 Cooperation to Prevent Disclosure of Confidential Information. Each party shall use its best efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, each party shall advise the other party immediately in the event either party learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and each party will cooperate with the other party in seeking injunctive or other equitable relief against any such person.

8. Proprietary Rights.

8.1 Pre-existing Materials. Customer acknowledges that, in the course of performing the Services, Service Provider may use software and related processes, instructions, methods, and techniques that have been previously developed by Service Provider (collectively, the "Pre-existing Materials") and that same shall remain the sole and exclusive property of Service Provider.

8.2 Ownership of Software: It is understood by the Customer that the Service Provider has given the Software on 'Software as a Service' (SAAS) agreement. It is accepted by the Customer that Service Provider gives no ownership of the software to the Customer.

8.3 Data of Customer. Customer's information, or any derivatives thereof, contained in any Service Provider repository (the "Customer Data," which

shall also be known and treated by Service Provider as Confidential Information) shall be and remain the sole and exclusive property of Customer. After the initial period of the contract if the customer requests, then the data will be given to the Customer as per the feasible format then available with the service provider, free of cost.

- 8.4 No License. Except as expressly set forth herein, no license is granted by either party to the other with respect the Confidential Information, Pre-existing Materials, or Customer Data. Nothing in this Agreement shall be construed to grant to either party any ownership or other interest, in the Confidential Information, Pre-existing Materials, or Customer Data, except as may be provided under a license specifically applicable to such Confidential Information, Pre-existing Materials, or Customer Data.

9. General Indemnity. Service Provider agrees to indemnify, defend, and hold Customer, its officers, directors, agents, and employees (each, an "Indemnitee" and collectively, the "Indemnitees") harmless from and against any and all liabilities, damages, losses, expenses, claims, demands, suits, fines, or judgments (collectively "Claims"), including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from any Customer Indemnitee, by reason of any Claim arising out of or relating to any act, error or omission, or misconduct of Service Provider, its officers, directors, agents, employees, and subcontractors, during the performance of this Agreement, including, without limitation, Claims arising out of or relating to: (a) bodily injury (including death) or damage to tangible personal or real property; (b) violation of any law or regulation; (c) Viruses; or, (d) breaches of any representations made under this Agreement; provided, however, that the foregoing indemnity shall not apply to the extent that the applicable Claim resulted from the acts or omissions of Customer, its officers, directors, agents, or employees.

10. Limitation of Liability. NOTWITHSTANDING ANY OTHER PROVISION SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, AND/OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE FOREGOING EXCULPATION OF LIABILITY SHALL NOT APPLY WITH RESPECT TO DAMAGES INCURRED AS A RESULT OF THE GROSS NEGLIGENCE OR WILFULL MISCONDUCT OF A PARTY. A PARTY SHALL BE LIABLE TO THE OTHER FOR ANY DIRECT DAMAGES ARISING OUT OF OR RELATING TO ITS PERFORMANCE OR FAILURE TO PERFORM UNDER THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE LIABILITY OF A PARTY, WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, EQUITY, NEGLIGENCE, TORT, OR OTHERWISE FOR ALL EVENTS, ACTS, OR OMISSIONS UNDER THIS AGREEMENT SHALL NOT EXCEED THE CURRENT YEAR FEES PAID UNDER THIS AGREEMENT, AND PROVIDED, FURTHER, THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO: (A) A PARTY'S OBLIGATIONS OF INDEMNIFICATION, AS FURTHER DESCRIBED IN THIS AGREEMENT; (B) DAMAGES CAUSED BY A PARTY'S GROSS NEGLIGENCE OR WILFULL MISCONDUCT; OR, (C) A PARTY'S BREACH OF ITS OBLIGATIONS OF CONFIDENTIALITY, AS FURTHER DESCRIBED IN THIS AGREEMENT. This Section shall survive the termination or amendments of this Agreement.

11. Complete Agreement

This Agreement together with all exhibits, appendices or other attachments, which are incorporated herein by reference, is the sole and entire Agreement between the parties. This Agreement supersedes all prior understandings, agreements and documentation relating to such subject matter. In the event of a conflict between the provisions of the main body of the Agreement and any attached exhibits, appendices or other materials, the Agreement shall take precedence.

12. Modifications to Agreement

Modifications and amendments to this Agreement, including any exhibit or appendix hereto, shall be enforceable only if they are in writing and are signed by authorized representatives of both parties.

13. Governing Law

This Agreement shall be interpreted under the laws of the State of Kerala, India. Any and all legal actions relative hereto shall be in the courts of Perumbavoor Jurisdiction only.

14. Signatures

Each party represents and warrants that on this date they are duly authorized to bind their respective principals by their signatures below.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth first above, with full knowledge of its content and significance and intending to be legally bound by the terms hereof.

CUSTOMER

SERVICE PROVIDER

Rev. Fr. Prasant Palackappillil
Principal

Mr. Pimin Poley
Managing Director



EXHIBIT A**Service Provider's Software as a Service Statement of Managed Services**

This Exhibit A - Service Provider's Software as a Service Statement of Work shall be incorporated in and governed by the terms of that certain Master "Software as a Service" Managed Services Agreement by and between **Sacred Heart College , Thevara, Kochi** ("Customer") and **EMSTEM TECHNOLOGIES (P) Ltd** ("Service Provider") dated 15th -April- 2015, as amended (the "Agreement"). Unless expressly provided for in this Exhibit A, in the event of a conflict between the provisions contained in the Agreement and those contained in this Exhibit A, the provisions contained in the Agreement shall prevail.

Services Description:	Installation ,Configuration , change management , user management
Support Description:	Telephonic , email , on site if required
Training Description:	Proper to perform
Backup	Daily at the end of the day
Service Windows:	
Service Levels:	<p>Bug Response Time: within 8 working hours Backup and Recovery Response Time: 12 working hours User Identification and Password Changes: 24 working hours Support Response Time: 4 working hours</p> <p>Free 100 hrs. Modification Annually . Any requirements or modification to be notified to the Service provider via official email. (No Carry forwarding of free hours to the next year). Any efforts more than the above mentioned would be chargeable.</p>
Modules	Admin, User Management, Admissions, Attendance, Fees, Examination, Teachers Evaluation, Student View, Student Portal, Petty Cash, Employee.
Customer Resources:	Single point contact
Responsibilities, Deliverables, and/or Activities:	Handholding the contact to ensure smooth functioning of the modules, after initial setup, customer to update data.
Services Fees or Rate and Payment Schedule:	<p>Rs.300/student per year + Applicable Taxes 8% increment from the 2nd Year onwards on previous year value. <u>Payment Schedule:</u> 50% of Total SaaS Value to be paid on or before 5th July and the balance 50% of Total SaaS Value to be paid on or before 5th of November <u>Renegotiation:</u> After the Initial Term of Contract the SaaS Rates are liable for renegotiation, and the mutually agreed amount between the Customer and the Service Provider will apply from there forth.</p>
Taxes And Duties	To be paid by the Customer
Start Date:	15 th April 2015
End Date:	31 st March 2020
Initial Term	5 Years

Executed on the dates set forth below by the undersigned authorized representatives of the parties to be effective as of the Start Date.

Sacred Heart College, Thevara
("Customer")

EMSTEM Technologies
Pvt Ltd
("Service Provider")

By:

Name : **Rev. Fr. Prasant Palackappillil**
Title : Principal
Date : 15th -April-2015

By:

Name : **Mr. Pimin Poley**
Title : Managing Director
Date : 15th -April-2015

