

**MAINTENANCE
&
SERVICE LEVEL AGREEMENT**

***FUNDMASTER- PENSION ADMINISTRATION
SOFTWARE***

Between

CLIENT

And

SYSTECH LTD

THIS AGREEMENT is made the BETWEEN CLIENT (hereinafter referred to as “CLIENT” which expression shall where the context so admits include its successors and assigns) of the one part and SYSTECH LIMITED of P.O. Box 41964 00100, Nairobi, Kenya, a limited liability company incorporated in the Republic of Kenya under the Companies Act (here in after referred to as “SysTech” which expression shall where the context so admits include its successors in the title and assigns) of the other part:

1. WHEREAS:

- 1.1. SysTech has supplied, installed and commissioned FundMaster Pension Administration Software, which includes an on-line access to member information through a web portal (hereinafter referred to as FundMaster) at CLIENT.
- 1.2. CLIENT has approached SysTech for the FundMaster maintenance and support and SysTech has agreed to provide the maintenance and support services as herein provided.

NOW THEREFORE this Agreement witness as follows:

2. DEFINITIONS AND INTERPRETATIONS

2.1. For the purpose of this agreement:-

“Equipment” means the computer hardware system specified in Part I of the annexure hereto or such other hardware system as may from time to time be installed with FundMaster Server.

“Operating Address” means the addresses of both CLIENT and SysTech as specified in Part II of the annexure hereto or future relocation addresses.

“Renewal Date” means each subsequent successive anniversary of this agreement.

“Annual license/maintenance fee” means the fee payable by CLIENT to SysTech on a renewal date for the right of extension of Fundmaster Licence and support services hereby granted as provided by Clause 4 hereof.

“Chargeable Services” means services requested by CLIENT that will lead to the development of new features or reconfiguration of FundMaster that were (features) NOT part of what CLIENT originally requested.

3. SYSTECH'S WARRANTIES

SysTech warrants to CLIENT that: -

- 3.1. Competent personnel with competent skill and reasonable care will perform all services in a timely and professional manner.

4. SYSTECH'S UNDERTAKINGS

SysTech undertakes to CLIENT that: -

- 4.1. If any programming error is found in any update, adjustment or modification of FundMaster supplied by SysTech to CLIENT, SysTech shall make correction as per service level agreement (Annexure II) mutually agreed in the maintenance agreement.
- 4.2. It shall use its best endeavors to ensure that the standard of software support provided by it is maintained at the agreed service level.

5. ANNUAL LICENSE / MAINTENANCE FEES

- 5.1. Subject to and in consideration of the payment by CLIENT to SysTech of the agreed annual maintenance fee and subject also to the observance and performance by CLIENT of the obligations on its part herein after contained, SysTech is hereby obligated to provide maintenance and support services as herein stated.
- 5.2. The Annual license/maintenance fee payable shall be the sum specified at Part III of the Annexure 1 hereto and shall remain constant during the contract period and can only be subject to a review at the contract renewal.
- 5.3. The annual maintenance/license fee will be paid annually and in advance.

6. RENEWAL DATE

- 6.1. The Annual maintenance fee shall be due and payable by CLIENT to SysTech on the Maintenance and Service Level Agreement renewal date.

7. CLIENT 'S UNDERTAKINGS

CLIENT hereby undertakes to SysTech that: -,

- 7.1. FundMaster will be operated by properly trained personnel.
- 7.2. It will not modify FundMaster or incorporate or permit the incorporation of FundMaster into any other computer software program or system. At the request of

CLIENT, SysTech will avail the interface for integration purposes to the requisite systems at a cost to be negotiated upon review of the scope of work involved in the development of the interface.

- 7.3. It will implement any update of FundMaster supplied to it by SysTech in accordance with directions given to it by SysTech.
- 7.4. It will make payments promptly without unreasonable demand, deduction or set-off on the renewal date.
- 7.5. It will at all times, avail a qualified, competent and well trained (in FundMaster) Database Administrator (DBA). Among other routine information technology administrative tasks, the DBA will be expected to do the following
 - i. Manage the FundMaster database eco-system (perform back-ups, restore, database security)
 - ii. Technically articulate issues raised by users and offer first line support on FundMaster
 - iii. Avail and maintain an updated Test environment (replica of the live database) where all tests will be carried out before being applied by CLIENT on the live environment.
 - iv. Ensure that Systech has no access to the Live Database.

8. LIMITATION OF SYSTECH'S LIABILITY

- 8.1. The provisions of clause 6 and clause 9 of this agreement shall prevail over all other undertaking conditions and warranties whether express or implied, statutory or otherwise.
- 8.2. SysTech shall not be liable for loss or damage suffered or alleged to have been suffered by CLIENT or any third party in the event that the same is or may be attributable to:
 - (a) Any breach by CLIENT of its undertakings set out in Clause 7 herein above.
 - (b) Operator error.
 - (c) Malfunction of hardware equipment.
 - (d) Delay solely caused by CLIENT in the provision of any service to be provided by SysTech in the terms of Clause 6 above.
 - (e) The negligence or failure by CLIENT to perform its obligations under this

agreement or under the general law.

8.3. Insurance for liability and Indemnity

Nothing in this agreement shall operate to exclude or restrict SysTech's tortuous liability for debts, personal injury or damage to physical property arising directly from the negligence of its employees, servants or agents whilst acting in the course of their employment.

The parties hereby agree that in the event of loss or damage, the same will be referred, where it cannot be resolved amicably between the parties, for mediation as provided for under Clause 19 hereof.

9. SOFTWARE SUPPORT

Software support shall be done in accordance to the mutually agreed service levels stipulated in the support statement.

9.1. SysTech shall provide the following services to CLIENT: -

- (a) Its telephony enquiry and diagnostic service relating to the use of FundMaster, but that access to this service shall be available to CLIENT only through its personnel who are recognized by SysTech as properly trained.
- (b) Software updates incorporating such changes and modifications as may be required by reason of changes in legislation and fiscal requirements.
- (c) Software updates incorporating relevant modifications and improvements to FundMaster considered by SysTech at its absolute discretion to be of general application to users of FundMaster

9.2. SysTech will provide at the request of CLIENT the following further services;

- (a) Such technical assistance and support as may reasonably be required by CLIENT to enable it obtain maximum beneficial use of FundMaster
- (b) Such adjustment as may reasonably be required to accommodate any changes in CLIENT's specific requirement for FundMaster
- (c) Training for all the staff of CLIENT intended to operate FundMaster. The training shall be conducted twice a year at a time to be agreed by both parties. Systech will use the "Train the trainers" approach. The trainees will be expected to be users who are well versed with FundMaster and the training will be on new features and/or enhancements. The training sessions will have a maximum of five (5) people and will run for (2) two days.

9.3 Managing changes to the Fundmaster system

SysTech undertakes that all changes to the FundMaster system will follow the following process, which will also be agreed with CLIENT, depending on the level of complexity of the changes:

- SysTech develops a Test Guide that is signed-off by CLIENT
- SysTech conducts comprehensive tests in-house
- SysTech provides the test results to CLIENT
- CLIENT tests on-site, based on the SysTech test results and implements on the live environment

9.4 Managing new developments and changes

- a) All new developments and changes that are requested by CLIENT and are chargeable must be treated as a separate project and contract, depending on the complexity of the change and must include the following:
 - objectives
 - deliverables
 - approach
 - workplan
 - test and implementation process
 - fees
 - charges for non-delivery

10. TERM

- 10.1. This agreement shall be for a duration of one (1) year after which it shall terminate automatically. Thereafter the contract may be renewed for a further negotiated period upon mutual agreement of both parties.

11. TERMINATION

- 11.1. CLIENT shall be entitled to terminate this agreement at any time by giving a written Ninety (90) days notice of termination to SysTech. SysTech shall co-operate fully and facilitate transition of operations to the new environment during the Ninety (90) days notice period.
- 11.2. This agreement shall automatically terminate if:-
- (1) Either party does or permits any act to be done by which the other party's right in the intellectual property may be prejudiced or put into jeopardy.
 - (2) Annual maintenance fee shall remain unpaid for a period of Ninety (90) days from the due date (whether or not the same would have been demanded by SysTech).
 - (3) Either party is in material or continuing breach of any of its obligations under this Agreement and fails to remedy the breach (if capable of remedy) within a period of Thirty (30) days after written notice by the other party.
- 11.3. Either party shall be entitled to terminate this Agreement forthwith by notice in writing to the other but only in the event of:-
- (1) Delay or failure by a party to perform its obligation under this agreement, if such delay or failures arises from any cause within the reasonable control of such a party, then the party not in default shall be entitled to terminate this agreement.
- Or
- (2) The appointment of a Receiver to Systech or Systech going into liquidation (other than voluntary liquidation) making of an Order of the Court for the winding up of a party or upon the making of any Order or Orders having like effect under any present or future enactment, then the party not affected shall be entitled to terminate this agreement.
- 11.4. In the event of this agreement being terminated whether by effluxion of time, notice, breach or otherwise, CLIENT shall immediately pay to SysTech:
- (1) All arrears of payments and any other sums due under the terms of this agreement.

- (2) Pro rated sums which would but for the determination of this agreement have fallen due at the end of the renewal date

12. VALUE ADDED TAX

All fees provided herein exclude VAT and/or any other similar tax which may at any time hereafter be imposed which will be applied to such fees in accordance with the statutory requirements in force when the fee falls due.

13. CONFIDENTIALITY

Both during the existence and after the expiry of this agreement and save in so far as the said agreement is in or may come into public domain through no act or omission of either party hereto or that disclosure thereof may be required by law, each of the parties shall maintain secret and confidential all information disclosed to it by the other and shall not divulge or allow to be divulged any information in relation (so far as SysTech, it' servants. Agents, employees or assigns are concerned) to the Registered Schemes and in relation (so far as the CLIENT it' servants. Agents, employees or assigns are concerned) to FundMaster and (far as both parties are concerned) to the businesses and affairs of the other.

14. INTELLECTUAL PROPERTY RIGHTS

For the avoidance of doubt, CLIENT hereby acknowledges that copyright and all other intellectual property rights of whatsoever nature in FundMaster (including all future adjustments, modifications and updates thereof and any programs specifically written in relation thereto by SYSTECH at the request of the Purchaser) are and shall at all times remain the property of SYSTECH and undertakes not to cause or permit anything which may damage or endanger the intellectual property of SYSTECH or SYSTECH's title to it or assist or allow others to do so.

However, at the request of CLIENT, SYSTECH shall deposit the source code of the most recent revision of FundMaster in an escrow account with a reputable financial institution. The source code will then be made available to CLIENT upon voluntary or involuntary winding up of SYSTECH or any other condition that will result in SYSTECH being unable to provide services as per the contract. Any charges arising from this arrangement will be borne by CLIENT.

Further, SYSTECH undertakes to indemnify CLIENT's warranty or undertaking in respect of any claim or demand made by any third party in respect of any alleged infringement of copyright or other intellectual property rights arising from the use of FundMaster.

15. NOTICES

Any notice to be served on either of the parties by the other shall be sent by prepaid recorded delivery or registered post or by electronic mail and shall be deemed to have been received by the addressee within 3 days of posting or 24 hours upon receipt of

delivery report if sent by electronic mail to the correct electronic mail address of the addressee.

16. RIGHTS CUMULATIVE

All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under this agreement shall prejudice or restrict the exercise of any other right granted by this agreement or otherwise available to it.

17. GENERAL

17.1. If any provision of this agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable (or indications to that effect are received by either of the parties from any competent authority) the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality or it may be severed from this agreement. All the remaining provisions of this agreement shall remain in full force and effect.

17.2. This Agreement shall govern the rights and obligations of the parties in relation to FundMaster support and maintenance and supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the date of this agreement but without prejudice to any rights which have already accrued to either of the parties.

18. WAIVER

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this agreement shall not be a waiver of them or the right at any time subsequently to enforce all terms and conditions of this agreement.

19. ARBITRATION

All disputes or differences which shall at any time arise between the parties, whether during the currency of this agreement or afterwards touching or concerning this agreement or its construction or effect or the rights, duties or liabilities of the parties under or by virtue of it or otherwise shall in the first instance be referred to a neutral third party agreeable to both parties for mediation. The said neutral third person must be someone with requisite computer knowledge, experience and technical know-how. However, should the intervention of the mediator fail to resolve the dispute, then the dispute shall be referred to arbitration in accordance with the Arbitration Act No 19 of 2000, in force in Kenya or any statutory amendment or re-enactment thereof for the time being in force and the decision of such arbitrator shall be final and binding.

20. FORCE MARJEURE

Neither party shall be liable to the other for any delay or failure by a party to perform

its obligation under this agreement or otherwise, or constitute a breach of any provision of this agreement, if such delay or failures arises from any cause beyond the reasonable control of such a party for which a substitute is not available including but not limited to, governmental regulations, war, fires, floods, regulation of any civil or military authority or any disaster (hereinafter referred to as “event of force majeure”).

Each of the parties hereto agrees to give notice to the other upon becoming aware of an event of force majeure, such notice detailing the circumstances giving rise to the event of force majeure

21. SCOPE OF THE SUPPORT AND MAINTENANCE SERVICES

- 21.1. General advice and guidance on the use of the system
- 21.2. Support log - SysTech will maintain an online support log on all issues raised, their cause and resolution.
- 21.3. System upgrades on the existing mandate
- 21.4. Scheme changes on the existing mandate
- 21.5. Technical support
- 21.6. Data conversion programs on features on the existing mandate
- 21.7. An on-going training program as in clause 9.2c
- 21.8. On-site training courses as in clause 9.2c
- 21.9. Training advice
- 21.10. Updated end user and technical manual to cater for system changes
- 21.11. System ‘Health Check’ in consultation with the CLIENT DBA