



AGREEMENT FOR THE PROVISION OF SERVICES

Supply, Support and *SystemShield* Maintenance Response Services

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DESCRIPTION OF SERVICES AVAILABLE:

M12 SOLUTIONS LTD is able to provide an increasing portfolio of services focused on the management and support of communications equipment and associated network services. The following conditions shall relate to this *SystemShield* Agreement depending on the Services and Charges specified in the *SystemShield* Agreement. Additional Services together with other special requirements are set out under "ADDITIONAL ITEMS, DESCRIPTION of SERVICES, INSTRUCTIONS or VARIATIONS" within the *SystemShield* Agreement.

Within the terms M12 shall mean M12 Solutions Ltd, which is registered in England and Wales with company registration number 3401975 of The Belfry, Solent Business Park, Fareham, Hampshire, PO15 7FJ.

SystemShield Service

Standard Service	Hours	09:00 – 17:00
	Days	Monday to Friday (excluding Bank & Public Holidays)
Silver SystemShield	Response Speed	Within 4 hours of Customer Service receiving the fault report for a complete system failure (i.e , At least 90% of extension users are unable to make or receive outside calls) Within 8 hours of Customer Service receiving the fault report for a partial system failure (i.e. at least 50% of users can make or receive outside calls)
Premium Service	Hours	24hrs
	Days	7 days a week, 365 days a year
Gold SystemShield	Response Speed	Within 4 hours of Customer Service receiving the fault report for a complete system failure. (i.e , At least 90% of extension users are unable to make or receive outside calls) Within 8 hours of Customer Service receiving the fault report for a partial system failure (i.e. at least 50% of users can make or receive outside calls)

SystemShield includes:

- 24x7 secure access to M12's Client Management Portal, **Keep21**
- Inventory registration and management
- Web, E-mail, or phone call reporting and updates
- Guaranteed Service Levels
- Easy Monthly Payment options
- Up to 1 hour of free remote requests free per month (4' up to 15minute jobs)
- Advance ticket purchase option for Facilities Management requests
- Free software updates - just pay for associated engineering time
- Pro-rata increases as new equipment etc. is added
- Same-day actioning of requests for minor works

Service Levels

M12 Solutions guarantees to provide service to a 95% level of response in any 6 month period. Any responses which fall outside the contracted time worsening M12's service level will allow the customer to make a claim to the value of 5% of the contract value or £75 whichever is the greater. Payable per incident to a maximum of 75% of the contract value.

General

TERMS & CONDITIONS:

1. M12 Solutions Ltd's Responsibilities & Warranty

- 1.1 M12 Solutions Ltd ("M12") shall provide the Service described and specified within this Agreement.
- 1.2 M12 shall exercise all reasonable skill and care in the provision of the Service and shall comply with all regulatory requirements of a maintainer of Call Routing Apparatus. The Service shall be provided by competent personnel in a professional manner in accordance with best industry practice. All faults on the System resulting from fair wear and tear shall be corrected in accordance with the appropriate class of Service. M12 shall use all reasonable endeavours to respond; including by remote means and by providing advice, within the time associated with the class of Service specified under "Service Details" in the *SystemShield* Maintenance Agreement. M12 shall provide a solution without unreasonable delay, assisting the Customer by providing advice, implementing remedial action through remote means, or arranging for a service engineer to visit site. Faults may be corrected by repair or, at M12's option, replacement of all or part of the System with repaired equipment, delivered to the Customer without a visit by an M12's engineer if such equipment is suitable for installation by the Customer.
- 1.3 Where replacement parts are provided by M12, the parts removed shall become the property of M12. . Where the cause of equipment failure has been diagnosed as lightning damage, M12 can, on behalf of the customer provide technical and authoritative communication regarding the fact that lightning damage has occurred and the equipment will be returned to the customer for the customer to liaise with their insurers.
- 1.4 Where the cause of a problem with the System is proved to be a System software fault, M12 will install a patch fix or implement an avoidance procedure.
- 1.5 M12 may, at any time, substitute a later release of System software which will incorporate corrections in lieu of patch fixes on earlier releases. Later releases providing unchanged features and facilities shall be provided free of charge.
- 1.6 If the Customer requests M12 to incorporate new features and / or facilities, a charge shall be made based on the licence fee for the new release.
- 1.7 Any modifications or additions to the System necessary to provide compatibility with a later release of System software shall be undertaken by M12 Solutions Ltd and a charge made based on the equipment supplied and the work completed. If reconfiguration of the System software is necessary to alter the operational parameters of the System a charge shall be made at the appropriate charging rates then in force based on the time spent on the reconfiguration, implementation and associated work.
- 1.8 Later releases of System software may create operational differences due to changes in the features and facilities available and M12 shall use all reasonable endeavours to minimise such differences and to advise the Customer of known differences prior to implementation. In no event shall M12 be held responsible for operational difficulties caused by the integration of later releases of System software with third party supplied equipment.

- 1.9 Later releases of software may mean that handset soft programming becomes reset. Re-installing the user programmable functions under available soft keys is the responsibility of the customer. If M12 are required to undertake this work it would be chargeable at the appropriate rates.
- 1.10 Replacement system software is provided under a non-exclusive and non-transferable licence for use with the System and only for the purpose for which System software is supplied.
- 1.11 If so requested by the Customer, M12 shall provide service outside the Customer's Service hours at additional charge, either by continuing work beyond the Customer's Service hours or by commencing work outside such hours.
- 1.12 Clause 5 of the Terms & Conditions describes the exclusions from the Service. It is probable that M12 is prepared to undertake the work at additional charge to the Customer, based on M12's rates applicable at the time of the work, subject to receipt of the Customer's authorised purchase order, e-mail, text or signed instruction by a director or authorised representative of the Customer's business.
- 1.13 In the event of a fault occurring which cannot be attributed with certainty to the equipment comprising the System, the Customer may report the fault to M12. If the fault proves not to be with the System, M12 reserves the right to make an additional charge for the work undertaken in response to the report (as specified in clause 5).
- 1.14 Response shall mean the time between the Customer reporting a fault and an engineer commencing activity to rectify the problem. Activity may include the dispatch of an engineer to site, the commencement of remote diagnostic work or the commencement of telephone call activity to establish the nature of the fault. If a fault is reported out of business hours for a Customer with a standard, Silver SystemShield agreement then the timing for response to the call shall be deemed to commence on the next working day.
- 1.15 Rectification shall mean the time that the fault is closed by M12 or an assigned partner of M12, help desk. Calls may be closed or paused if the nature of the fault means that the manufacturer is required to provide rectification, examples include firmware updates, software updates, or product recalls. Such calls are only closed for service level reporting purposes.
- 1.16 M12 will liaise and endeavour to ensure that manufacturer related issues are resolved speedily. M12 will cover up to £350 of labour associated with each such incident of manufacturer issues free of charge to the Customer. M12 Solutions' dialogue with the manufacturer will be provided for Customer scrutiny understanding and potential involvement with the M12 team.
- 1.17 In order to ensure excellence in our delivery of the Service, telephone calls to and from our customer service centre may be recorded.

2. Customer's Responsibilities

The Customer shall be responsible for:

- 2.1 Ensuring that the environmental conditions at the site of the System comply with M12's requirements from time to time, the Network Operator and any other approved authority.
- 2.2 Ensuring that M12's engineers have full, free and timely access to the System. This includes providing the environment required for remote access to enable response for diagnosis and rectification of reported faults. If the Customer's security processes mean that the Customer would have to "switch on" access for M12, then the response time shall be considered to have begun once access is available.
- 2.3 Providing adequate working and storage space, and such other facilities as M12 staff may reasonably require, and observing any common law or statutory requirements relating to health and safety at work.

- 2.4 Indemnifying M12 against any claims arising against M12 due to the Customer permitting the System to be altered, adjusted or interfered with by other than M12 authorised engineers, or due to M12 being unable to keep the System in good working order due to causes within the control of the Customer.
- 2.5 Complying with all statutory requirements concerning the use of the System.
- 2.6 Obtaining and paying for all licences necessary for operation of the System.
- 2.7 Preventing anyone other than M12 staff from altering, adjusting or otherwise interfering with the System or any equipment maintained by M12 without M12's written consent, which shall not be withheld or delayed unreasonably. If a non-M12 engineer provides additions to the System then the Customer agrees to indemnify M12 for any performance issues which may arise until a successful SystemShield acceptance test for such works is conducted by either M12 or their authorised representatives. The Customer agrees to pay the fee for SystemShield acceptance test for such works.
- 2.8 Ensuring that all drawings, sketches and information supplied to M12 upon which M12 shall rely are sufficiently accurate and factual for M12's purposes.
- 2.9 The Customer should have their phone system, call server, applications server and phone modules backed up by an uninterruptible power supply (UPS) and mains power surge protector. If M12 responds to a fault which requires any of these units to be replaced and the units are not backed up with a UPS and surge protector, then M12 will assume that the equipment will have been damaged due to power spikes / electrical damage. In such an event M12 will advise the Customer of the failure and M12's charge will be the manufacturers recommended sale price (RSP) of the equipment.

3. Limitation of Liability

- 3.1 Save where expressly provided otherwise in this Agreement, M12's aggregate annual liability under and or in connection with this Agreement and howsoever arising, shall be limited to the greater of £5,000 or the element of one year's Charge applicable to the Site where and on the date that the liability arises.
- 3.2 M12's liability for damage to the property of the Customer arising from any cause whatsoever shall not exceed £1,000,000 in respect of one incident or £2,000,000 in respect of any series of incidents arising from a common cause in a twelve month period.
- 3.3 Except in the case of death or personal injury due to M12's negligence or any liability of M12 arising under Part 1 of the Consumer Protection Act 1987, in no event shall M12 be liable under or in connection with this Agreement, for any loss of contracts, profits, anticipated savings, revenue, business or use of the Hardware and/or Software, loss of data or software programs, interruption in the use or availability of data, stoppage to other work, nor for any indirect or consequential losses arising from negligence, breach of contract and/or statutory duty.
- 3.4 M12 shall not be liable for the fraudulent use of the System by the Customer and/or third parties.
- 3.5 M12 Solutions Ltd does not exclude or restrict liability for death or personal injury due to its negligence or liability arising under Part 1 of the Consumer Protection Act 1987.
- 3.6 Each provision of this clause shall survive independently and M12's entire liability under and in connection with this Agreement is set out in this clause. All other terms implied by statute, law or custom are excluded.
- 3.7 M12 shall not be liable for the failure to provide the Service if the failure results from any force majeure event (whether happening in the United Kingdom or elsewhere), such as, but not limited to, Act of God, refusal of licence or other Government act, fire, explosion, accident, lightning damage, electromagnetic interference, radio interference, industrial dispute, failure on the part of M12's supplier/s, or any cause beyond M12's reasonable control.

3.8 Clause 3 shall apply before and after termination of this Agreement.

4. Charges, Adjustment & Payment

4.1 The Charge for the Service, exclusive of VAT and such other UK taxes as may be payable on the supply of equipment and services from time to time, is specified in the "Charges" section on the *SystemShield* Maintenance Agreement. It is payable annually in advance and the time for payment shall be of the essence for this Agreement. VAT at the rate in force from time to time, shall be added to all fees and charges payable by the Customer to M12.

4.2 M12 may adjust the Charge effective at any time following expiry of the first year of the Service, however, this shall not occur more frequently than once in any twelve month period. Any increase in charges will have the reason for the increase provided with the renewal notice.

4.3 The Charge may be adjusted in the event that the Class of Service provided for the System is changed by agreement, or any changes are made to the requirements of the Network Operator affecting the provision of the Service, or revised software is installed in the System, or the software installed in the System is no longer a current release, or the System is extended by the addition of further hardware or software. In any such event, the Charge may be amended immediately in accordance with M12's then current charges.

4.4 Any additional charge, for example, as a result of work described in clause 5, shall be payable in accordance with the terms specified in the relevant M12's invoice. If the System is enhanced or expanded by more than 30% capacity then M12 reserves the option to set out a new annual contract and credit in full the pre-paid component of the first agreement.

4.5 Should any sum due for payment be in arrears for fifteen days or more, M12 shall be under no obligation to provide the Service, and any additional charges incurred as a result of the delay in carrying out the Service shall be paid by the Customer.

4.6 Any payment due to M12 under this Agreement which is thirty days or more overdue shall bear interest on a day to day basis at the rate of 5% over the Base Lending Rate of the HSBC Bank, from due date until the date payment is received, until and following any court judgement. Monies received may be applied by M12 against such interest prior to application against other monies due from the Customer.

4.7 Payments can be made quarterly or monthly in advance by arrangement, but will usually incur an additional charge of 12.5% of the contract value with a minimum of £50 which will be added to the contract value.

5. Costs not included In the Charge

5.1 In relation to costs and causes of work for which costs are not included in the Charge for which M12 reserves the right to make additional charge at its current rates:

5.1.1 in connection with equipment not listed under the "System" section on *SystemShield* Maintenance Agreement.

5.1.2 any failure of line wiring, extension wiring connected to the System or ancillary maintained equipment (the work shall be undertaken at additional charge), or any failure of telephones not under *SystemShield* cover or headsets;

5.1.3 lightning damage, electrical surges, electro-magnetic interference and damage caused by sudden loss of electrical power without proper system shutdown procedures being followed;

5.1.4 accidental or deliberate damage, misuse, negligence or failure to observe M12's recommendations or those of the Network Operator, or other relevant and competent authority; causes external to the System such as those resulting from any failure or fluctuation of the

- electricity supply or air conditioning; any defect or failure in the Public Telecommunications Network; any fault which is not the result of fair wear and tear;
- 5.1.5 moves and changes required by the Customer;
 - 5.1.6 to meet a change in the requirements or practices of the Network Operator or other relevant authority;
 - 5.1.7 replacement of consumable materials, including, but not limited to, labels, cords, leads, batteries and USB drives;
 - 5.1.8 loss of Customer-generated software programs;
 - 5.1.9 responding to a fault report when the System proves not to be faulty, for example, where no fault exists or the fault is with the Network or equipment maintained by others;
 - 5.1.10 Maintenance Acceptance Tests (MAT) which M12 reserves the right to perform prior to accepting the System for SystemShield, or Network connection procedures requested by the Customer;
 - 5.1.11 errors in information supplied by the Customer upon which M12 has placed reliance;
 - 5.1.12 repair or replacement of equipment relating to standby power supplies including rectifiers, batteries and uninterruptible power supplies (UPS), such work would be undertaken at an additional charge;
 - 5.1.14 work covered by this Agreement taking longer or attracting additional costs as a result of any of the causes in sub-clauses 5.1.1 to 5.1.12 inclusive.

6. Term of Agreement, Default & Termination

- 6.1 This Agreement shall continue for the minimum term specified as the “minimum term” in the *SystemShield* Maintenance Agreement, and shall renew automatically on an annual basis thereafter. Either party may terminate this Agreement on expiry of the minimum term or on expiry of any subsequent full year of service, at least sixty (60) days but not more than one hundred and twenty (120) days before the renewal date by providing written notice to the other party.
- 6.2 If the Customer seeks to terminate this Agreement other than in accordance with sub-clause 6.1 or other relevant clauses of this Agreement, and M12 accepts such termination, the Customer shall pay to M12 all payments for the remainder of the then current year of the Agreement, plus 80% of the Charge for the next year (s) of the minimum term of the Agreement. This sum shall be payable as liquidated damages as an agreed estimate of M12’s probable loss.
- 6.3 If either party commits any material breach of this Agreement and fails to remedy it within 30 days of receiving written notice from the other party or shall convene a meeting of its creditors or if a proposal shall be made for a voluntary arrangement within Part 1 of the Insolvency Act 1986 or a proposal for any other composition scheme or arrangement with (or assignment for the benefit of) its creditors or shall be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or if a trustee receiver administrator or similar officer is appointed in respect of all or part of the business or assets or if a petition is presented or a meeting convened for the purpose of considering a resolution or other steps are taken for the winding up of the party or for the making of an administration order (otherwise than for the purpose of amalgamation or reconstruction) it shall constitute a repudiation by that party of its obligations under this Agreement, and at any time thereafter the other party may by written notice suspend performance of or terminate this Agreement.

- 6.4 If after five years from the date on which the System was originally brought into service M12 reasonably forms the opinion that the Service can no longer be provided economically, M12 shall notify the Customer of the options which it considers are available. Should M12 and the Customer fail to agree on a course of action, M12 shall be entitled to terminate the Agreement on sixty (60) days written notice.
- 6.5 If M12 feel that the software level of the maintained system is too old to be able to deliver the service levels purchased by the Customer, then M12 will advise the Customer and repair will be on a best endeavours basis. If a software upgrade would allow M12 to be able to properly maintain the system, the Customer would not unreasonably refuse to purchase the later release of software and associated engineering labour to help ensure that service levels can be met.

7. Indemnity

The Customer shall indemnify M12 against all claims, losses, costs, expenses, damages, fees including legal costs, it may incur due to claims against it in connection with the any statutory or regulatory modification or replacement thereof, and this Agreement.

8. General Conditions

- 8.1 This Agreement shall be governed by English Law and be subject to the jurisdiction of the English Courts.
- 8.2 If any provision of this Agreement is unenforceable, the other provisions of this Agreement shall remain in force.
- 8.3 This Agreement, together with any authorised variations attached hereto, comprises the entire agreement between the parties.
- 8.4 No amendments to this Agreement shall be effective or binding unless they are in writing and signed by a duly authorised representative of M12.
- 8.5 Rights accrued at the date of any termination of this Agreement and rights intended by their nature to survive termination shall survive any such termination.
- 8.6 Failure by either party to enforce or exercise any right under this Agreement shall not amount to a waiver or bar to enforcement of that right.
- 8.7 Clause headings shall not affect legal interpretation of this Agreement.
- 8.8 The Customer shall not assign or otherwise deal with its rights or obligations under this Agreement without the prior written consent of M12. M12 shall have the right to assign, novate or delegate or otherwise deal with all or any of its rights and obligations upon notification to the Customer.
- 8.9 Neither party shall disclose any information relating to this Agreement without the express consent of the other party whether this Agreement continues in force or not.
- 8.10 For the duration of this Agreement and for one year following its termination the Customer shall not employ any member of M12's staff who has provided services to the Customer under this Agreement.
- 8.11 These Terms & Conditions shall prevail over any proposed by the Customer or implied by trade custom or practice.
- 8.12 These terms can be adjusted by M12 should any terms within be discovered to be unenforceable, should the terms provide additional benefits and protection to the Customer, should the terms provide additional clarification to terms described within this agreement, should the terms reflect operational practices considered to be advances to those already in place, should the new term provide better protection to the viability of the services provided to the M12's customer base generally. Such updates of the terms would be advised and made available on request and at the annual renewal.

- 8.13 If the Customer enters into a dispute with M12 and cannot provide their signed copy of the agreement entered into by them or produce the electronic dated update of the agreement, the then current M12 terms of *SystemShield* will be considered to be those appropriate for mutual use.
- 8.14 If the Customer enters a supply agreement with M12 which includes M12 pre-paid *SystemShield* cover, then these terms will be considered the appropriate terms for mutual use and will be considered binding upon M12 providing sight of these terms to the Customer.
- 8.15 If the Customer receives *SystemShield* service for software or equipment which had not been itemised as part of the *SystemShield* Maintenance Agreement then M12 reserves the right to charge the Customer for such service at the appropriate rates.

9. Multi-Year Agreements

- 9.1 M12 encourages its Customers to enter into agreements to run alongside the life of the Systems it supplies. Customers who enter into a multiple year agreement will enjoy the following beneficial terms in addition to the financially favourable multi-year proposal for the Customer:
 - 9.1.1 The contract can be cancelled without penalty if the Customer closes down the installed site and does not “move” to another address. For example if the business is taken over and has no further need for the System to be maintained.
 - 9.1.2 The contract can be cancelled without penalty if the market rate for alike services are more than 15% lower than M12’s pricing for the same services as long as M12 have been given every opportunity to bring its prices down to the competing figure (which should be derived from an average of three (3) alike alternative suppliers offering the same service levels)
 - 9.1.3 The contract can be cancelled without penalty if M12 fails to provide service in line with the agreed service levels of the contract (after being provided reasonable opportunities to remedy any breaches, highlighted by the Customer)
 - 9.1.4 The fees payable by Customers who have agreed to enter into a multiple year *SystemShield* agreement will be increased on each anniversary of the commencement of the agreement by an amount equal to the last published twelve (12) month increase in the retail prices index as published by H M Government.

