



SOFTWARE AS A SERVICE SUBSCRIPTION AGREEMENT:

RELATING TO MULTITONE NUCLEUS SERVICES

MULTITONE ELECTRONICS PLC

AND

XXXXXXXXXXXXXXXXXX

Contract Ref: MNUC-25-XXX
Day Month Year

THIS AGREEMENT is dated

1st October 2024

PARTIES

- (1) **MULTITONE ELECTRONICS PLC** incorporated and registered in England and Wales with company number 256314 whose registered office is at Multitone House, Shortwood Copse Lane, Basingstoke, RG23 7NL (**Supplier**);
- (2) **Intercity Technologies Ltd** incorporated and registered in England and Wales with company number 01938625. whose registered office is at Holloway Head, Birmingham, B1 1QP (**Customer**).

BACKGROUND

- (A) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet on a pay-per-use basis for the purpose of software licensing, implementation, hosting, maintenance and support, and any related services.
- (B) The Customer wishes to use the Supplier's service in its business operations.
- (C) The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this Agreement.

AGREED TERMS

1. Interpretation

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Applicable Laws	means:
	(a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom.
	(b) To the extent EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject.
Applicable Data Protection Laws	means:
	(a) To the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom which relates to the protection of personal data.
	(b) To the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Supplier is subject, which relates to the protection of personal data.
Authorised Users	those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in clause 2.2.4.
Business Day	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
Change of Control	the beneficial ownership of more than 50% of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression change of control shall be interpreted accordingly.
Confidential Information	information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.1.
Customer Data	the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.
Customer Personal Data	any personal data which the Supplier processes in connection with this Agreement, in the capacity of a processor on behalf of the Customer.
Documentation	the document(s) made available to the Customer by the Supplier online via http://www.multitone.com or such other web address notified by the Supplier to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.
Effective Date	the date of this Agreement.
EU GDPR	the General Data Protection Regulation ((EU) 2016/679).
Heightened Cybersecurity Requirements	any laws, regulations, codes, guidance (from regulatory and advisory bodies. Whether mandatory or not), international and national standards and sanctions, which are applicable to either the Customer or an Authorised User relating to

	security of network and information systems and security breach and incident reporting requirements, which may include the cybersecurity Directive ((EU) 2016/1148), Commission Implementing Regulation ((EU) 2018/151), the Network and Information systems Regulations 2018 (SI 506/2018), all as amended or from time to time.
Purpose: the purposes for which the Customer Personal Data is processed, as set out in Initial Subscription Term Mandatory Policies	Clause 5.8.1.
Normal Business Hours Services	the initial term of this Agreement as set out in schedule 2. the updated Supplier's business policies listed in schedule 3, as amended by notification to the Customer from time to time. 9.00 am to 5.00 pm local UK time, each Business Day. the subscription services provided by the Supplier to the Customer under this Agreement via Amazon Web Services or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.
Software	the online software applications provided by the Supplier as part of the Services.
Subscription Fees	the subscription fees payable by the Customer to the Supplier for the User Subscriptions, as set out in paragraph 1 of schedule 1.
Subscription Term	being the agreed Subscription Term set out in Schedule 2 below.
Supplier Personal Data	any personal data which the Supplier processes in connection with this Agreement, in the capacity of a controller.
Support Services Policy	the Supplier's policy for providing support in relation to the Services as made available at Amazon Web Services or such other website address as may be notified to the Customer from time to time.
UK GDPR	has the meaning given to it in the Data Protection Act 2018.
User Subscriptions	the user subscriptions purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.
Virus	Anything or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.
Vulnerability	a weakness in the computational logic (for example, code) found in software and hardware components that when exploited, results in a negative impact to the confidentiality, integrity, or availability, and the term Vulnerabilities shall be interpreted accordingly.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this Agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this Agreement under that statute or statutory provision.
- 1.9 A reference to writing or written excludes fax but not email.
- 1.10 References to clauses and schedules are to the clauses and schedules of this Agreement; references to paragraphs are to paragraphs of the relevant schedule to this Agreement.

2. User subscriptions

- 2.1 Subject to the Customer purchasing the User Subscriptions in accordance with clause 3.3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this Agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right and licence, without the right to grant sublicences, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.
- 2.2 In relation to the Authorised Users, the Customer undertakes that:
- 2.2.1 the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - 2.2.2 it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
 - 2.2.3 each Authorised User shall keep a secure password for their use of the Services and that each Authorised User shall keep their password confidential;
 - 2.2.4 it shall maintain a written, up to date list of current Authorised Users and provide such list to the Supplier within 5 Business Days of the Supplier's written request at any time or times;
 - 2.2.5 it shall permit the Supplier or the Supplier's designated auditor to audit the Services in order to establish the name and password of each Authorised User and the Customer's data processing facilities to audit compliance with this Agreement. Each such audit may be conducted no more than once per quarter, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - 2.2.6 if any of the audits referred to in clause 2.2.5 reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Supplier's other rights, the Customer shall promptly disable such passwords and the Supplier shall not issue any new passwords to any such individual; and
 - 2.2.7 if any of the audits referred to in clause 2.2.5 reveal that the Customer has underpaid Subscription Fees to the Supplier, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in paragraph 1 of schedule 1 within 10 Business Days of the date of the relevant audit.
- 2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- 2.3.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - 2.3.2 facilitates illegal activity;
 - 2.3.3 depicts sexually explicit images;
 - 2.3.4 promotes unlawful violence;
 - 2.3.5 is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - 2.3.6 is otherwise illegal or causes damage or injury to any person or property;
- and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 2.4 The Customer shall not:
- 2.4.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
 - 2.4.1.1 attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - 2.4.1.2 attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - 2.4.2 access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
 - 2.4.3 use the Services and/or Documentation to provide services to third parties; or
 - 2.4.4 subject to clause 22.1, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
 - 2.4.5 attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2; or
 - 2.4.6 introduce or permit the introduction of, any Virus or Vulnerability into the Supplier's network and information systems.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.

- 2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

3. Additional user subscriptions

- 3.1 Subject to clause 3.2 and clause 3.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of the number set out in paragraph 1 of schedule 1 and the Supplier shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.
- 3.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request. Where the Supplier approves the request, the Supplier shall activate the additional User Subscriptions within 7 days of its approval of the Customer's request.
- 3.3 If the Supplier approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such additional User Subscriptions as set out in paragraph 2 of schedule 1 and, if such additional User Subscriptions are purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Supplier for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).

4. Services

- 4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this Agreement.
- 4.2 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
- 4.2.1 planned maintenance carried out during the maintenance window of 10.00 pm to 2.00 am UK time; and
 - 4.2.2 unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 24 Normal Business Hours' notice in advance.
- 4.3 The Supplier will, as part of the Services, and as far as reasonably possible, provide the Customer with the Supplier's standard customer support services during Normal Business Hours in accordance with the Supplier's Support Services Policy in effect at the time that the Services are provided. The Supplier may amend the Support Services Policy in its sole and absolute discretion from time to time. The Customer may purchase enhanced support services separately at the Supplier's then current rates.

5. Data protection

- 5.1 For the purposes of this clause 5, the terms controller, processor, data subject, personal data, personal data breach and processing shall have the meaning given to them in the UK GDPR.
- 5.2 Both parties will comply with all applicable requirements of Applicable Data Protection Laws. This clause 5 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under Applicable Data Protection Laws.
- 5.3 The parties have determined that, for the purposes of Applicable Data Protection Laws the Supplier shall process the personal data set out in Schedule 4, as a processor on behalf of the Customer in respect of the processing activities set out in **Error! Reference source not found..**
- 5.4 Should the determination in clause 5.3 change, then each party shall work together in good faith to make any changes which are necessary to this clause 5 or the related schedules.
- 5.5 By entering into this Agreement, the Customer consents to (and shall procure all required consents, from its personnel, representatives and agents, in respect of) all actions taken by the Supplier in connection with the processing of Supplier Personal Data, provided these are in compliance with the then-current version of the Supplier's privacy policy available at <https://www.multitone.com/privacy-policy/> (Privacy Policy). In the event of any inconsistency or conflict between the terms of the Privacy Policy and this Agreement, the Privacy Policy will take precedence.
- 5.6 Without prejudice to the generality of clause 5.2, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Supplier Personal Data and Customer Personal Data to the Supplier for the duration and purposes of this Agreement.
- 5.7 In relation to the Customer Personal Data, Schedule 4 sets out the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of personal data and categories of data subject.
- 5.8 Without prejudice to the generality of clause 5.2 the Supplier shall, in relation to Customer Personal Data:
- 5.8.1 process that Customer Personal Data only on the documented instructions of the Customer, which shall be to process the Customer Personal Data for the purposes set out in Schedule 4, unless the Supplier is required by Applicable Laws to otherwise process that Customer Personal Data. Where the

- Supplier is relying on Applicable Laws as the basis for processing Customer Processor Data, the Supplier shall notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit the Provider from so notifying the Customer on important grounds of public interest. The Supplier shall inform the Customer if, in the opinion of the Supplier, the instructions of the Customer infringe Applicable Data Protection Legislation;
- 5.8.2 implement the technical and organisational measures set out in Schedule 4 to protect against unauthorised or unlawful processing of Customer Personal Data and against accidental loss or destruction of, or damage to, Customer Personal Data, which the Customer has reviewed and confirms are appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - 5.8.3 ensure that any personnel engaged and authorised by the Supplier to process Customer Personal Data have committed themselves to confidentiality or are under an appropriate statutory or common law obligation of confidentiality;
 - 5.8.4 assist the Customer insofar as this is possible (taking into account the nature of the processing and the information available to the Supplier), and at the Customer's cost and written request, in responding to any request from a data subject and in ensuring the Customer's compliance with its obligations under Applicable Data Protection Laws with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 5.8.5 notify the Customer without undue delay on becoming aware of a personal data breach involving the Customer Personal Data;
 - 5.8.6 at the written direction of the Customer, delete or return Customer Personal Data and copies thereof to the Customer on termination of the agreement unless the Supplier is required by Applicable Law to continue to process that Customer Personal Data. For the purposes of this clause 5.8.6 Customer Personal Data shall be considered deleted where it is put beyond further use by the Supplier; and
 - 5.8.7 maintain records to demonstrate its compliance with this clause 5.
- 5.9 The Customer hereby provides its prior, general authorisation for the Supplier to:
- 5.9.1 appoint processors to process the Customer Personal Data, provided that the Supplier:
 - 5.9.1.1 shall ensure that the terms on which it appoints such processors comply with Applicable Data Protection Laws, and are consistent with the obligations imposed on the Supplier in this clause 5;
 - 5.9.1.2 shall remain responsible for the acts and omission of any such processor as if they were the acts and omissions of the Supplier; and
 - 5.9.1.3 shall inform the Customer of any intended changes concerning the addition or replacement of the processors, thereby giving the Customer the opportunity to object to such changes provided that if the Customer objects to the changes and cannot demonstrate, to the Supplier's reasonable satisfaction, that the objection is due to an actual or likely breach of Applicable Data Protection Law, the Customer shall indemnify the Supplier for any losses, damages, costs (including legal fees) and expenses suffered by the Supplier in accommodating the objection.
 - 5.9.2 transfer Customer Personal Data outside of the UK as required for the Purpose, provided that the Supplier shall ensure that all such transfers are effected in accordance with Applicable Data Protection Laws. For these purposes, the Customer shall promptly comply with any reasonable request of the Supplier, including any request to enter into standard data protection clauses adopted by the EU Commission from time to time (where the EU GDPR applies to the transfer) or adopted by the UK Information Commissioner from time to time (where the UK GDPR applies to the transfer).
- 5.10 Either party may, at any time on not less than 30 days' notice, revise clause 5 by replacing it (in whole or part) with any applicable standard clauses approved by the EU Commission or the UK Information Commissioner's Office or forming part of an applicable certification scheme or code of conduct (Amended Terms). Such Amended Terms shall apply when replaced by attachment to this Agreement, but only in respect of such matters which are within the scope of the Amended Terms.
- 5.11 Subject to 13.2, and in addition to 13.3 and notwithstanding any other terms of this Agreement, the Supplier's total aggregate liability in contract, tort (including negligence and breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement or any collateral contract insofar as it relates to the obligations set out in this clause 5, or Applicable Data Protection Laws shall be limited to £100,000.

6. Third party providers

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third parties via third-party websites and that it does so solely at its own risk. The Supplier makes no representation, warranty or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, or any transactions completed, and any contract entered into by the Customer, with any such third party. Any contract entered into and any transaction completed via any third-party website is between the Customer and the relevant third party, and not the Supplier. The Supplier recommends that the Customer refers to the third party's website terms and conditions and privacy policy prior to using the relevant third-party website. The Supplier does not endorse or approve any third-party website nor the content of any of the third-party website made available via the Services.

7. Supplier's obligations

- 7.1 The Supplier undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2 The undertaking at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 7.1.
- 7.3 The Supplier:
 - 7.3.1 does not warrant that:
 - 7.3.1.1 the Customer's use of the Services will be uninterrupted or error-free;
 - 7.3.1.2 that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements;
 - 7.3.1.3 the Software or the Services will be free from Vulnerabilities or Viruses; or
 - 7.3.1.4 the Software, Documentation or Services will comply with any Heightened Cybersecurity Requirements.
 - 7.3.2 is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.4 This Agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this Agreement.
- 7.5 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.
- 7.6 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy against the Supplier shall be for the Supplier to use reasonable commercial endeavours to restore the lost or damaged Customer Data. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by the Supplier to perform services related to Customer Data maintenance and back-up for which it shall remain fully liable).

8. Customer's obligations

- 8.1 The Customer shall:
 - 8.1.1 provide the Supplier with:
 - 8.1.1.1 all necessary co-operation in relation to this Agreement; and
 - 8.1.1.2 all necessary access to such information as may be required by the Supplier; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
 - 8.1.2 without affecting its other obligations under this Agreement, comply with all applicable laws and regulations with respect to its activities under this Agreement;
 - 8.1.3 carry out all other Customer responsibilities set out in this Agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - 8.1.4 ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;

- 8.1.5 obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
 - 8.1.6 ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
 - 8.1.7 be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.
- 8.2 The Customer shall own all right, title and interest in and to all of the Customer Data that is not personal data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of all such Customer Data.

9. Charges and payment

- 9.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 9 and schedule 1 and the support fees in accordance with clause 4.3 and schedule 1.
- 9.2 The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete credit card details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:
 - 9.2.1 its credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such credit card:
 - 9.2.1.1 on the Effective Date for the Subscription Fees payable in respect of the agreed Subscription Term (see Schedule 2 below).
 - 9.2.2 its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:
 - 9.2.2.1 on the Effective Date for the Subscription Fees payable in respect of the agreed Subscription Term (see Schedule 2 below).
 - 9.2.2.2 and the Customer shall pay each invoice within 30 days after the date of such invoice.
- 9.3 If the Supplier has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of the Supplier:
 - 9.3.1 the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - 9.3.2 interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current base lending rate of the Supplier's bankers in the UK from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment.
- 9.4 All amounts and fees stated or referred to in this Agreement:
 - 9.4.1 shall be payable in pounds sterling;
 - 9.4.2 are, subject to clause 13.3.2, non-cancellable and non-refundable;
 - 9.4.3 are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.
- 9.5 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space specified in the Documentation, the Supplier shall charge the Customer, and the Customer shall pay, the Supplier's then current excess data storage fees. The Supplier's excess data storage fees current as at the Effective Date are set out in schedule 1.
- 9.6 The Supplier shall be entitled to increase the Subscription Fees, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3, the support fees payable pursuant to clause 4.3 and/or the excess storage fees payable pursuant to clause 9.5 at the start of each Renewal Period upon 90 days' prior notice to the Customer and schedule 1 shall be deemed to have been amended accordingly.

10. Proprietary rights

- 10.1 The Customer acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this Agreement does not grant the Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.
- 10.2 The Supplier confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

11. Confidentiality and compliance with policies

11.1 **Confidential Information** means all confidential information (however recorded or preserved) disclosed by a party or its Representatives (as defined below) to the other party and that party's Representatives whether before or after the date of this Agreement in connection with the Multitone Nucleus Subscription Services Order , including but not limited to:

- 11.1.1 the terms of this Agreement or any agreement entered into in connection with this Agreement;
- 11.1.2 any information that would be regarded as confidential by a reasonable business person relating to:
 - 11.1.2.1 the business, assets, affairs, customers, clients, suppliers, or plans , intentions, or market opportunities of the disclosing party (or of any member of the group of companies to which the disclosing party belongs); and
 - 11.1.2.2 the operations, processes, product information, know-how, designs, trade secrets or software of the disclosing party (or of any member of the group of companies to which the disclosing party belongs);
- 11.1.3 any information developed by the parties in the course of carrying out this Agreement and the parties agree that:
 - 11.1.3.1 details of the Services, and the results of any performance tests of the Services, shall constitute Supplier Confidential Information; and
 - 11.1.3.2 Customer Data shall constitute Customer Confidential Information;

Representatives means, in relation to a party, its employees, officers, contractors, subcontractors, representatives and advisers.

11.2 The provisions of this clause shall not apply to any Confidential Information that:

- 11.2.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- 11.2.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- 11.2.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- 11.2.4 the parties agree in writing is not confidential or may be disclosed.

11.3 Each party shall keep the other party's Confidential Information secret and confidential and shall not:

- 11.3.1 use such Confidential Information except for the purpose of exercising or performing its rights and obligations under or in connection with this Agreement (Permitted Purpose); or
- 11.3.2 disclose such Confidential Information in whole or in part to any third party, except as expressly permitted by this clause 11.

11.4 A party may disclose the other party's Confidential Information to those of its Representatives who need to know such Confidential Information for the Permitted Purpose, provided that:

- 11.4.1 it informs such Representatives of the confidential nature of the Confidential Information before disclosure; and
- 11.4.2 at all times, it is responsible for such Representatives' compliance with the confidentiality obligations set out in this clause.

11.5 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 11.5, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.

11.6 A party may, provided that it has reasonable grounds to believe that the other party is involved in activity that may constitute a criminal offence under the Bribery Act 2010, disclose Confidential Information to the Serious Fraud Office without first informing the other party of such disclosure.

11.7 Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this agreement are granted to the other party, or to be implied from this Agreement.

11.8 On termination or expiry of this Agreement, each party shall:

- 11.8.1 destroy or return to the other party all documents and materials (and any copies) containing, reflecting, incorporating or based on the other party's Confidential Information;
- 11.8.2 erase all the other party's Confidential Information from computer and communications systems and devices used by it, including such systems and data storage services provided by third parties (to the extent technically and legally practicable); and

- 11.8.3 certify in writing to the other party that it has complied with the requirements of this clause, provided that a recipient party may retain documents and materials containing, reflecting, incorporating or based on the other party's Confidential Information to the extent required by law or any applicable governmental or regulatory authority. The provisions of this clause shall continue to apply to any such documents and materials retained by a recipient party, subject to clause 14 (Termination).
- 11.9 No party shall make, or permit any person to make, any public announcement concerning this Agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.
- 11.10 Except as expressly stated in this Agreement, no party makes any express or implied warranty or representation concerning its Confidential Information.
- 11.11 The above provisions of this clause 11 shall survive for a period of five years from termination or expiry of this Agreement.
- 11.12 In performing its obligations under this Agreement, the Customer shall comply with the Mandatory Policies.

12. Indemnity

- 12.1 The Customer shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
 - 12.1.1 the Customer is given prompt notice of any such claim;
 - 12.1.2 the Supplier provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - 12.1.3 the Customer is given sole authority to defend or settle the claim.
- 12.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Customer's use of the Services or Documentation in accordance with this Agreement infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - 12.2.1 the Supplier is given prompt notice of any such claim;
 - 12.2.2 the Customer does not make any admission, or otherwise attempt to compromise or settle the claim and provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - 12.2.3 the Supplier is given sole authority to defend or settle the claim.
- 12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this Agreement on 2 Business Days' notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
 - 12.4.1 a modification of the Services or Documentation by anyone other than the Supplier; or
 - 12.4.2 the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
 - 12.4.3 the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 12.5 The foregoing and clause 13.3.2 states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. Limitation of liability

- 13.1 Except as expressly and specifically provided in this Agreement:
 - 13.1.1 the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
 - 13.1.2 all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this Agreement; and
 - 13.1.3 the Services and the Documentation are provided to the Customer on an "as is" basis.
- 13.2 Nothing in this Agreement excludes the liability of the Supplier:
 - 13.2.1 for death or personal injury caused by the Supplier's negligence; or

- 13.2.2 for fraud or fraudulent misrepresentation.
- 13.3 Subject to clause 13.1 and clause 13.2:
- 13.3.1 the Supplier shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement; and
- 13.3.2 the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Agreement shall be limited to the lower of £500,000 or the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.
- 13.4 Nothing in this Agreement excludes the liability of the Customer for any breach, infringement or misappropriation of the Supplier's Intellectual Property Rights.

14. Term and termination

- 14.1 This Agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Subscription Term (see Schedule 2 below).
- 14.1.1 otherwise terminated in accordance with the provisions of this Agreement;
- 14.2 Without affecting any other right or remedy available to it, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
- 14.2.1 the other party fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
- 14.2.2 the other party commits a material breach of any other term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- 14.2.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986;
- 14.2.4 the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 14.2.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 14.2.6 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- 14.2.7 an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- 14.2.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 14.2.9 a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- 14.2.10 a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- 14.2.11 any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 14.2.3 to clause 14.2.10 (inclusive);
- 14.2.12 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;
- 14.2.13 the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of this Agreement is in jeopardy.
- 14.3 Without affecting any other right or remedy available to it, the Supplier may terminate this Agreement with immediate effect by giving written notice to the Customer if there is a change of control of the Customer (within the meaning of section 1124 of the Corporation Tax Act 2010).
- 14.4 On termination of this Agreement for any reason:

- 14.4.1 all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- 14.4.2 each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- 14.4.3 the Supplier may destroy or otherwise dispose of any of the Customer Data in its possession unless the Supplier receives, no later than ten days after the effective date of the termination of this Agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. The Supplier shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by the Supplier in returning or disposing of Customer Data; and
- 14.4.4 any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

15. Force majeure

Neither party shall be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure result from events, circumstances or causes beyond its reasonable control. The time for performance of such obligations shall be extended accordingly. If the period of delay or non-performance continues for 4 weeks, the party not affected may terminate this Agreement by giving 30 days' written notice to the affected party.

16. Conflict

If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

17. Variation

No variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

18. Waiver

- 18.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.
- 18.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

19. Rights and remedies

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

20. Severance

- 20.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.
- 20.2 If any provision or part-provision of this Agreement is deemed deleted under clause 20.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

21. Entire agreement

- 21.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous agreements, promises, assurances and understandings between them, whether written or oral, relating to its subject matter.
- 21.2 Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 21.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

22. Assignment

- 22.1 The Customer shall not, without the prior written consent of the Supplier, assign, novate, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.
- 22.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

23. No partnership or agency

Nothing in this Agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

24. Third party rights

This Agreement does not confer any rights on any person or party (other than the parties to this Agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

25. Counterparts

- 25.1 This Agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 25.2 Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "wet-ink" counterpart of this Agreement. If this method of transmission is adopted, without prejudice to the validity of the agreement thus made, each party shall on request provide the other with the "wet ink" hard copy original of their counterpart.
- 25.3 No counterpart shall be effective until each party has delivered to the other at least one executed counterpart.

26. Notices

- 26.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
- 26.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 26.1.2 sent by email to the following addresses (or an address substituted in writing by the party to be served):
- 26.1.2.1 Supplier: **Multitone Electronics Plc, Multitone House, Shortwood Copse Lane, Basingstoke, RG23 7NL.**
- 26.1.2.2 Customer: **Intercity Technologies Ltd, Holloway Head, Birmingham, B1 1QP**
- 26.2 Any notice shall be deemed to have been received:
- 26.2.1 if delivered by hand, at the time the notice is left at the proper address;
- 26.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 26.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 26.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

27. Governing law

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with the law of England and Wales.

28. Jurisdiction

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

This has been entered into on the date stated at the beginning of it.

SCHEDULE 1- Subscription Fees

1. SUBSCRIPTION FEES

The Subscription Fees shall amount to a total of **£25,363.00 p.a.** for the agreed period of 1 (One) Year, payable annually in advance. These Subscription fees provide access to the Multitone Services as defined in SCHEDULE 5 – Description of Services

2. ADDITIONAL USER SUBSCRIPTION FEES

Additional User Subscriptions may be purchased by the Customer in accordance with clause 3. Pricing is subject to the required service and based upon a Multitone Quotation, Available upon request.

3. EXCESS STORAGE FEES

At the time of this agreement, Multitone does not charge excess storage fees. This is subject to review at the time of contract renewal, a new agreement, or amendment of this existing agreement.

4. ENHANCED SUPPORT AND ADDITIONAL SERVICE FEES

Available upon request.

SCHEDULE 2- Subscription Term

Subscription Term: 12 months only from the Commencement Date

SCHEDULE 3- Mandatory Policies

The Mandatory Policies are:

- [Slavery and Human Trafficking Policy](#)
- [Privacy Policy](#)
- [Money Laundering Policy](#)

SCHEDULE 4 - Particulars of the processing

Purposes for which the Personal Data shall be processed Please specify the purposes for which the Data Processor intends to process the Personal Data.	The Supplier's solution needs to collect and store an amount of personal data about users to allow it to maintain its core operations.
Description of the categories of the data subjects Please specify the categories of data subject whose Personal Data shall be processed under this Agreement.	Personal information is processed about the Customer and its users where necessary for the running of the software and to provide the Services.
Description of the categories of Personal Data Please specify the categories of Personal Data that shall be processed under this Agreement.	Personal data includes Customer Personal Data including Name, User Name, Job title, Email addresses, Department, Contact Telephone Numbers.
Description of transfers of Personal Data to a country outside of the EEA Please record transfers of Personal Data outside of the EEA, recording the country and/or international organisation and, where applicable, please document suitable safeguards.	No Personal Data is transferred outside of the EEA.
The envisaged time limits for erasure of the different categories of Personal Data Please specify how long you think the Personal Data will be retained for, where possible.	Following the termination or expiry of the Customer's contract, Personal Data held and processed on behalf of the Customer may be returned to the Customer at its own option. 30 days after termination or expiry of the agreement, all Personal Data processed on behalf of the Customer shall be permanently deleted.
General description of technical and organisational security measures Where possible, please describe the measures put in place under Article 32(1) GDPR.	- Encryption of data; - Ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; - ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and - process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing. These measures might be updated from time to time.
Authorised Sub-Processors List the sub-processors who will process Personal Data.	Amazon Web Services – web hosting

SCHEDULE 5 – Description of Services

Part No.	Multitone Nucleus - Component Description	Quantity

Please note:

This agreement and the services provided form part of the overall solution delivered by

Multitone Electronics PLC to XXXXX XXXXXX XXXXX.

The remainder of the solution, relating to customer owned equipment, is provided for and supported by a separate Multitone Multicare Product Support Agreement ref MEP/XX/XXX

Signed by, for and on behalf of

Multitone Electronics Plc

.....

Printed Name

.....

Title:

.....

Date:

.....

Signed by, for and on behalf of

Intercity Technologies Ltd

.....

Printed Name

.....

Title:

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Date:

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