

AUTO XTION MEMBERSHIP SUBSCRIPTION AGREEMENT

THIS AGREEMENT made the day of

BETWEEN: The Party named in Item 1 of Schedule 1 (**Supplier**)

AND: The Party named in Item 2 of Schedule 1 (**Member**)

RECITALS:

- A. The Supplier sells a membership subscription Auto Xtion Communication Platform.
- B. The Supplier is the owner or licensed user of the confidential information and intellectual property rights to the Auto Xtion Communication Platform.
- C. The member wishes to subscribe to the Auto Xtion Communication Platform (System) from the Supplier and the Supplier has agreed to supply the Auto Xtion Communication Platform to the member on the terms and conditions contained in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1.0 INTERPRETATION

- 1.1 In this Agreement unless the context otherwise requires:

Agreement means this Agreement together with the schedules and annexures identified in this Agreement;

Base Amount means the members joining fee which has to be paid on acceptance of becoming a registered member as specified in Item 3 of Schedule 2; which is non-refundable and a one-off payment.

Business Day means a day on which trading banks holding a current Australian banking license are open for business in Australia, and does not include a public holiday, Saturday or Sunday.

Commencement Date means the date referred to in Item 3 of Schedule 1;

Confidential Information has the meaning given to it by clause 12;

Auto Xtion Communication Platform means:

- (a) in respect of a system which is agreed to be utilised by the member, or a customer of the member from the members login access;
- (b) in respect of services and resources which are to be delivered to the member or in the case of any new service that is subsequently included in paragraph (a), that would add value to the system,

provided that membership will be deemed not to have occurred until the later of:

- (i) the date for membership to commence has been confirmed via email or postal letter ; or other such means for the purpose of notification.
- (ii) if the member failed to make payment, on the promised date.
- (iii) Services do not conform to the member's express or implied obligations arising out of this Agreement as to quantity or quality, then on that date when those obligations of the Supplier are fulfilled;

Jurisdiction means the country, state or territory nominated in Item 4 of Schedule 1;

Minimum System Performance Criteria means the level of service performance described in Schedule 2 item 1;

Prices means the prices listed in Item 2 of Schedule 2 as amended by adjustment pursuant to clause 6.3;

System means the services specified in Item 1 of Schedule 2 and such other services as the parties may agree and is added;

Members Premises means those premises identified in Item 9 of Schedule 1 or such other premises as the member may reasonably nominate in writing from time to time;

Supplier's Premises means those premises identified in Item 8 of Schedule 1;

Term means the period commencing on the Commencement Date and finishing on the termination of this Agreement which, is subject to clause 2, will be the period referred to in Item 5 of Schedule 1.

1.2 In this Agreement unless the contrary intention appears:

- (a) a reference to this Agreement or another instrument includes any variation or replacement of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the masculine includes the feminine and neuter, the feminine includes the masculine and neuter, the neuter includes the masculine and feminine;
- (e) the word "person" includes a firm, a body corporate, and unincorporated association or an authority;

- (f) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, a person taking by novation) and assigns;
 - (g) an agreement, liability, obligation, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;
 - (h) a reference to any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of persons is a reference to any one or more of them; and
 - (i) a reference to all parties, clauses, exhibits, annexures or schedules shall, unless otherwise provided, be to the parties, clauses, exhibits, annexures or schedules of or to this Agreement.
- 1.3 Headings and sub-headings are included for ease of reference and none of the provisions of this Agreement are to be construed or interpreted by reference to such headings and sub-headings.
- 1.4 This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter thereof and contains all of the representations, undertakings, warranties, covenants and agreements of the parties. This Agreement supersedes all prior negotiations, contracts, arrangements, understandings and agreements with respect to such subject matter. There are no representations, undertakings, warranties, covenants or agreements between the parties express or implied except as contained in this Agreement.
- 1.5 A provision of or a right created by this Agreement may not be waived or varied except in writing signed by the supplier.
- 1.6 All references to currency shall be Australian dollars unless expressly stated otherwise.

2. TERM

- 2.1 This Agreement will continue for the Term subject to:
- (a) earlier termination pursuant to clause 15;

3. SUPPLY OF SYSTEM

1. The Supplier hereby agrees to supply the System to the member during the Term and the member agrees to subscribe to the system during the Term from the Supplier on the terms set out in this Agreement.
- 3.2 The Supplier and the member acknowledge that it is not within the member's control to purchase all of its requirements for product's and services from the system which are substitutable from competitors, from the Supplier.

4. SUPPLIERS OBLIGATIONS

- 4.1 The Supplier shall, if requested by the member on the members Premises (or such other place as may be agreed), and at the Supplier's cost, demonstrate to the member and its relevant personnel all the technical aspects of the subscription system which, in the members opinion, are reasonably necessary to enable the member to receive the benefit of and to fully discharge its obligations under this Agreement.

5. SYSTEM PERFORMANCE CRITERIA

- 5.1 The supplier shall meet the Minimum System Performance Criteria, during the subscription period and as per Schedule 3.

6. PRICE AND PAYMENT

- 6.1 On registration, the member is required to pay a joining fee (non-refundable) as per item 3 of schedule 2, and thereafter continue to make a monthly subscription payment as per item 2 of schedule 2.
- 6.2 For the first year of the Term the Supplier will use its best endeavours to maintain the prices payable by the member for the system subscription, which will be at the levels specified in Item 2 of Schedule 2. If it becomes necessary to amend its prices for the subscription, the Supplier shall provide to the member all necessary information justifying the price increase, and the parties shall negotiate in good faith new subscription pricing.
- 6.3 The Supplier and the member agree that prices will be reviewed at the end of each year of the Term to reflect any changes in the market.

7. MEMBERS OBLIGATIONS

- 7.1 The member shall at all times comply with the Australian Conformity Assessment Procedures and with all laws, orders, decrees, regulations and directions relevant to the system and its other obligations under this Agreement and without limitation the member shall:
- (a) apply for and maintain during the term of this Agreement all necessary licenses, permits and other consents or approvals required by any relevant government authority; and
 - (b) furnish any reports or other documents required by any relevant government authority, within the period specified in legislation;

8. WARRANTIES AND INDEMNITIES

- 8.1 The Supplier warrants that the system will be supplied to a standard equal to or exceeding the Standard.
- 8.2 The member, without limiting any other express or implied indemnity contained in this Agreement, indemnifies the supplier against any claims, suits, demand, actions, costs or expenses that the member may suffer or incur arising out of the system subscription supplied by the Supplier pursuant to this Agreement:

- (a) not providing merchantable value;
- (b) not being in accordance with the Specifications;
- (c) not being of the grade or quality ordered by the member;
- (d) being unsafe, or defective;
- (e) not being free from all latent and patent defects;
- (f) not complying with the Standards or the requirements of all other appropriate standards whether officially published or otherwise; and;
- (g) not complying with any contractual obligations of the member to a third party.

9. INTELLECTUAL PROPERTY

- 9.1 The Supplier warrants that it is the sole owner of or, where appropriate, is the registered user of, any patents, trade marks, copyright, data or trade secrets connected directly or indirectly to the Products and the Supplier agrees to indemnify and forever hold harmless the member against any actions arising from any breach of this warranty and the warranty contained in clause 8.2.
- 9.2 The Supplier warrants that the Products do not infringe the industrial or intellectual property rights of any third party.
- 9.3 The supplier shall at all times retain title to the copyright or any other intellectual property rights (whether furnished by the member in connection with this Agreement or otherwise) and to the trade marks in relation to the Products (“Supplier IP”). During the term of this Agreement the supplier’s IP shall be deemed to be held by the member on a subscription basis only and at the members sole risk.

10. CONFIDENTIAL INFORMATION

- 10.1 In this clause “Confidential Information” means all trade secrets, suppliers IP, commercial, technical and other information of a party (“the Disclosing Party”) including information relating to the members customer, but does not include:
 - (a) any information which is in, or acquired from the public domain or without fault on the part of the other party (“the Receiving Party”) becomes part of the public domain;
 - (b) was known to the Receiving Party without restriction (either express or implied) at the commencement of this Agreement; or

- (c) was acquired by the Receiving Party from a person whom the Receiving Party reasonably believed was under no obligation of confidentiality relating to the Confidential Information.
- 10.2 The Receiving Party agrees to treat the Confidential Information as confidential and not to disclose any part of the Confidential Information to any person or to make use of the Confidential Information other than for purposes related directly to or as permitted by this Agreement (“the Permitted Purpose”).
- 10.3 Without limiting clause 10.2 the Receiving Party agrees that:
 - (a) it will not disclose the Confidential Information to any person or make use of or take advantage of the Confidential Information for any purpose other than as specifically permitted by this Agreement;
 - (b) it will take all reasonable steps to ensure that the Confidential Information is kept confidential;
 - (c) upon request, it will return to the Disclosing Party any Confidential Information, together with any copies of the Confidential Information;
 - (d) it will immediately notify the Disclosing Party of the occurrence of any circumstances where the Confidential Information is used by any person other than pursuant to an obligation of confidentiality in terms of this clause.
- 10.4 Nothing in this clause 10 will prohibit the Receiving Party from disclosing so much of the Confidential Information as is required to be disclosed by law. The Receiving Party will notify the Disclosing Party if such a disclosure is made and will also take advantage of any provisions pursuant to that law which restricts the amount of or the nature of the information liable to be disclosed or which provides a mechanism for protecting the confidentiality of the disclosed information.
- 10.5 The Receiving Party indemnifies the Disclosing Party against any claims, suits, demand, actions, costs or expenses suffered or incurred by the Disclosing Party as a result of a breach of this clause by the Receiving Party.

11. DEFAULT

- 11.1 Without limiting any other remedies available to either party, a party (“Non-Defaulting Party”) may terminate this Agreement immediately by giving the other party (“Defaulting Party”) written notice if the Defaulting Party:
 - (a) is or is deemed pursuant to any applicable law governing its operation or incorporation to be unable to pay its debts as and when they fall due;
 - (b) presents or threatens to present or file with a Court or Tribunal any process by which it seeks an order, declaration or direction that it be declared insolvent, or be wound up or that it have a liquidator (in whatever capacity) appointed or it resolves that it be wound up; or

- (c) enters into a scheme of arrangement or composition with its creditors, passes a resolution at a meeting of creditors to place it under management for the benefit of creditors generally or any creditor or class of creditors specifically;
 - (d) has an agent, mortgagee, receiver or a receiver and manager appointed or go into possession in relation to the whole or any part of its property;
 - (e) fails within twenty-eight days of receipt of written notice from the Non-Defaulting Party, specifying the breach complained of, to remedy a material breach.
- 11.2 If the Supplier does not receive any payment within thirty (30) days of the payment being due and payable to it in accordance with this Agreement, then in addition to any other right or remedy available to the Supplier, the Supplier may give a further fourteen (14) days written notice to the member that it requires payment to be made and that failing such payment it may suspend the members subscription entitlements under this Agreement.
- 11.3 Termination of this Agreement will be without prejudice to any rights or obligations or causes of action which have occurred or arisen prior to the date of termination and does not relieve either party from complying with any duties or obligations with which they must comply consequent upon termination.
- 11.4 Upon termination of this Agreement, each party must:
- (a) continue to maintain the confidentiality of the Confidential Information disclosed to it pursuant to clause 10 and at its own expense return any copies or reproductions of it in any form;

12. **FORCE MAJEURE**

- 12.1 Neither party will be liable to the other for any failure to fulfil or any delay in fulfilling any obligation arising from this Agreement if the failure or delay has been caused directly or indirectly by any of the following circumstances (**Force Majeure Delay**):
- (a) any Act of God;
 - (b) war or other civil commotion;
 - (c) strikes, lockouts, stoppages and restraints of labour;
 - (d) breakdown of machinery;
 - (f) fire or explosion;
 - (g) any government action; or
- any other cause beyond the reasonable control of a party and not a consequence of that party's own negligence.

- 12.2 Notwithstanding the provisions of clause 12.1 the parties will, where practical, take steps to overcome or minimise the effects of the Force Majeure Delay.
- 12.3 If any party is prevented from carrying out any part of its obligations under this Agreement because of a Force Majeure Delay, that party must give the other party or parties a notice of the occurrence of the Force Majeure Delay and the obligations of that party will be suspended during the continuation of the Force Majeure Delay.
- 12.4 Nothing in clause 12.3 will be construed as suspending the obligation on the part of the member to make payment of any amounts due to the Supplier at the time of the occurrence of the Force Majeure Delay.
- 12.5 Where a Force Majeure Delay continues for any period exceeding those provided for in Item 6 of Schedule 1, either the Supplier or the member may terminate this Agreement and the provisions of clause 11.4 shall apply.

13. MISCELLANEOUS

- 13.1 This Agreement will be governed and construed in accordance with the laws of the Jurisdiction and each party submits to the non-exclusive jurisdiction of the Courts of that place.
- 13.2 Nothing in this Agreement will render either party the servant, agent or employee of the other or be deemed to create the relationship of partner, joint venturer or principal and agent and the member and its officers, employees, servants and agents must not by any act or omission hold out or represent that they are authorised to represent or act on behalf of the Supplier in any way.
- 13.3 No forbearance, delay or indulgence by a party in enforcing the provisions of this Agreement will prejudice or restrict the rights of that party nor will any waiver of those rights operate as a waiver of any subsequent breach. The parties agree that any waiver must be in writing.
- 13.4 This Agreement may be executed in a number of counterparts and all of the counterparts taken together will be deemed to constitute one instrument.
- 13.5 Any provision in this Agreement which is invalid or unenforceable in any jurisdiction will, for the purposes of that jurisdiction, be read down, if possible, so as to be valid and enforceable or otherwise severed to the extent of the invalidity or unenforceability, without affecting the validity or enforceability of the remaining provisions of this Agreement or of that provision in any other jurisdiction.
- 13.6 Where there is any translation of this Agreement to another language then, in the case of any conflict between the two texts, this Agreement as executed by the parties in English shall be the sole determining text. Correspondence and other communications between the parties shall be in English.
- 13.7 This Agreement may only be varied, modified, amended or added by further agreement.

13.8 Any notice demand, consent or other communication under this Agreement:

- (a) must be in writing addressed to the address of the parties specified in Item 8 and 9 of Schedule 1;
- (b) must be signed by an authorized employee of the sender or under the common seal of the sender;
- (c) will be deemed to be duly received by or served on the addressee:
 - (i) if by delivery in person, when delivered;
 - (ii) if by cable, upon receipt of the cable;
 - (iii) if by post, seven (7) days from and including the date of postage;
 - (iv) if by telex, upon receipt of the sender of the answer back code of the addressee; and
 - (v) if by facsimile transmission on dispatch of the transmission.
- (d) a party may amend any of the particulars referred to in paragraph 16.8.1 of this clause by written notice to the other parties.

14. GOODS AND SERVICES TAX

GST means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge;

GST Amount means any Payment (or the relevant part of that Payment) multiplied by the appropriate rate of GST (currently 10%);

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999*, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act;

Input Tax Credit has the meaning given to that term by the GST Law;

Payment means any amount payable under or in connection with this Agreement including any amount payable by way of indemnity, reimbursement or otherwise (other than a GST Amount) and includes the provision of any non-monetary consideration.

Tax Invoice has the meaning given to that term by the GST Law.

Taxable Supply has the meaning given to that term by the GST Law.

14.1 The parties agree that:

- (a) all Payments have been calculated with regard to GST;

- (b) each party will comply with its obligations under the *Trade Practices Act 1974* when calculating the amount of any Payment and the amount of any relevant Payments will be adjusted accordingly;
- (c) if the whole or any part of any Payment is the consideration for a Taxable Supply, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing;
- (d) any reference to a cost or expense in this Agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit; and
- (e) the payee will provide to the payer a Tax Invoice.

SCHEDULE 1

Agreement Details

- | | |
|--------|---|
| Item 1 | <p>The Supplier:</p> <p>AUTO INDEPENDENCE Pty Ltd T/A AUTO XTION
(ACN: 612067964)</p> |
| Item 2 | <p>Member:</p> <p>Not limited to any Business or Individual</p> |
| Item 3 | <p>Commencement Date:</p> |
| Item 4 | <p>Jurisdiction:</p> <p>This agreement will be governed by and construed in accordance with the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales.</p> |
| Item 5 | <p>Term:</p> <p>Month on month (no contract period)</p> |
| Item 6 | <p>Period of Entitlement to Terminate for Force Majeure done</p> <p>Any continuous period of three months or aggregate delays exceeding six months.</p> |
| Item 7 | <p>Notices:</p> |
| Item 8 | <p>The Supplier Premises:</p> <p>Auto Independence Pty Ltd T/A Auto Xtion (ACN: 612 067 964)</p> |
| Item 9 | <p>Member's Premises</p> |

SCHEDULE 2

Item 1 Auto Xtion Communication Platform

Item no	Services
1	Communication platform between members and customers
2	Ecommerce platform between members and suppliers
3	System access on mobile devices

Item 2 **Monthly Subscription Fee**

\$50.00 (Exclusive GST)

Item 3 **Base Amount**

\$250.00 (Inclusive GST).

SCHEDULE 3

Minimum Delivery Performance Criteria

Item 1: Ecommerce

The member shall be able to procure goods and services from various suppliers at discounted rates that has been negotiated and agreed upon by the supplier, and various distribution partners, as per item 1 of schedule 1.

EXECUTED by the parties as an Agreement.

EXECUTED by [*Auto Independence*)
Pty Ltd T/A Auto Xtion] ACN)
 [612067964] by its duly authorised)
 manager in the presence of:

.....
 Witness' Signature

.....
 Authorised Manager's Signature

.....
 Name of Witness (print)

.....
 Name of Manager (print)

EXECUTED by [*SPECIFY*] ACN)
 [*SPECIFY*] by its duly authorised)
 manager in the presence of:)

.....
 Witness' Signature

.....
 Authorised Manager's Signature

.....
 Name of Witness (print)

.....
 Name of Manager (print)