

TERMS AND CONDITIONS

These terms and conditions, together with your electronic application, form a legally binding agreement between Alto Cibus (as defined below) and you (as described in the application).

1. PROVISION OF SERVICE

Subject to this Agreement, we will provide the Service to you during the Term.

2. PAYMENT

2.1 Amount

You must pay the Fees. Unless expressly stated otherwise, the Fees do not include GST. If GST applies to any supply of goods or services or payment under this Agreement then the amount payable will be adjusted by adding the applicable amount of GST.

2.2 Timing

You must make all payments in accordance with the Billing Arrangements. If you do not make a payment when due, then the amount unpaid will bear interest at 1.0% per month, compounding monthly.

3. YOUR OPERATIONAL OBLIGATIONS

3.1 Availability of Source Systems

Throughout the Term you must make available to us all of the data (**Source Systems Data**) recorded or maintained on the relevant third party online systems used by your business (**Source Systems**) that we agree to connect to the Service, which may include (for example):

- (a) point of sale data; and
- (b) rostering and related staff, wage and time tracking data,

You must make the Source Systems Data available through standard online portal access for the corresponding Source Systems, including by providing relevant usernames and passwords or other access tokens or mechanisms. You appoint us as your agent to access the Source Systems on your behalf and warrant that we are permitted to do so under the applicable terms. We warrant that will not make any change to any Source System Data stored on the Source Systems – we will only read it.

You agree that we are unable to, and are not obliged to, provide the Service if or when any of the Source Systems are not available and fully functioning via the standard online portal.

You must ensure that your provision of Source Systems Data to us does not breach the rights of any individual, including any rights of confidentiality or under any Privacy Law. You must do all things necessary (including by obtaining any relevant consent) to ensure we are not obliged under any Privacy Law to notify any individual that we have obtained information about them where it forms part of the Source System Data.

3.2 Changes to Source Systems

We exclude any obligation to provide the Service if any change is made to any Source System, or any online portal access to them, that is incompatible with the Service. Where practical, we will endeavour to ensure such compatibility, but we are not obliged to ensure ongoing compatibility and we exclude any liability for any incompatibility (and any resulting failure or error) resulting from any subsequent change to any Source System, or the online portal access to it, that we have not expressly agreed to accommodate.

3.3 Adequacy of Source Systems Data

Our provision of the Service, and its quality, depends upon the accuracy and completeness of the Source Systems Data. We do not check, validate, vet or correct any Source System Data (even if any error, omission or inconsistency is apparent) and we exclude any obligation to do so. We may provide the Service using the Source System Data even if contains errors or is incomplete or inconsistent. We exclude all liability for any failure to provide the Service or any part of it, or any error in it, to the extent it arises from any error, omission or inconsistency in any Source Systems Data.

You agree that the information provided via the Service does not take into account any data that is not included in the Source System Data. For example, any calculation of daily profitability will not take into account any expense that is not included in the Source System Data as an expense for the relevant day.

3.4 General obligations

You are responsible for providing your own hardware, software and telecommunications services (including internet access) necessary to access the Service. In addition, during the term of this Agreement you must do the following (and ensure that any person using the Service on your behalf does the following):

- (a) comply with any User Guide, and all reasonable directions from us;
- (b) comply with all laws applicable in any way in relation to the Service;
- (c) only use the Service (including all or any part of any webpages, or corresponding code, provided to you in the course of the Service) for your own internal use, and not provide or resell the Service (or any part of it) to any other person, whether or not as part of any other service;
- (d) not use the Service, or permit the Service to be used (directly or indirectly), in any way that:
 - (i) commits, or encourages or causes to be committed by any person, any offence or unlawful act or omission; and
 - (ii) is fraudulent, false, misleading or deceptive; or
 - (iii) infringes, or encourages the infringement of, a third party's rights, including intellectual property, confidentiality or privacy rights;
- (e) not do, or permit to be done, any act which could damage our reputation or the reputation of the Service;
- (f) not use the Service, or any of our trademarks, logo or brands in any way that represents or implies an endorsement or association with you or your activities; or
- (g) respect all copyright notices, not infringe our intellectual property in relation to the Service and not reverse engineer the Service to produce any competitive product (except to the extent that doing so is expressly permitted by law and any right to do so cannot be excluded).

Without limiting the above, we may (but are not obliged to) remove or take down any Content that you post or store online with us through use of the Service that in our opinion results, or may result, in a breach of any of the above.

4. CONFIDENTIAL INFORMATION

4.1 Obligation of confidentiality

You and we each agree to keep confidential any Confidential Information of the other and to use it only for the purposes of this Agreement.

4.2 Exceptions

Clause 4.1 does not apply to the following, and you hereby consent to any corresponding use or disclosure:

- (a) any information that enters the public domain other than by breach of this Agreement, or is required by law to be disclosed;
- (b) the disclosure of information by us to Suppliers (including personal information in relation to any individual);
- (c) internal use and analysis of Source Systems Data by us (whether or not required to perform this Agreement); and
- (d) disclosure of aggregated anonymous information based on your Source System Data, meaning information that satisfies both of the following:
 - (i) it is generated by aggregating your Source Systems Data with other data; and
 - (ii) a member of the public could not, using that information alone, calculate any of your Source System Data (or any sum and/or product of it) and attribute it to you.

5. INTELLECTUAL PROPERTY

5.1 No rights to our software

This Agreement only gives you a right to use the Service. It does not grant you a licence to use, or any right to obtain a copy of, any software that we use to provide the Service and we retain all intellectual property owned by us in it.

5.2 Ownership and use of Source Systems Data and Content

We do not acquire ownership of any intellectual property in respect of any Source Systems Data or any Content submitted to us by you (or on your behalf) through use of the Service, however you hereby grant us (and warrant that you have the right and authority to grant us) a non-exclusive, irrevocable, perpetual transferable licence to copy, use, modify, sublicense, adapt and otherwise exploit in any way all Source Systems Data and any such Content for any purpose, provided that we comply with clause 4 (Confidential Information).

6. SECURITY

6.1 Issue of Logins

As part of the provision of the Service, we will issue a single user ID and password (together being a "Login") for use by a Permitted User on your behalf as an admin user of the Service. The admin user will be responsible (via the admin user Login) for adding and deleting Permitted Users as further users of the Service on your behalf by the issuing of usernames and passwords using the facility provided via the Service (**Customer Issued Logins**). You must ensure that the admin user Login and each Customer Issued Login is only used by Permitted Users and that any Customer Issued Login issued for use by a particular individual is promptly revoked if that individual ceases to be a Permitted User.

6.2 Use of Logins

You are liable for all use of the Service (including instructions, requests and information submitted via the Service) in connection with any use of the admin user's Login or any Customer Issued Login, including where the use is:

- (a) by a person other than you (or an authorised representative of you);
- (b) by a person using the admin user Login or Customer Issued Login fraudulently or without your authority; or
- (c) by means of a machine rather than by direct or indirect human intervention or initiation.

Without limiting the above, we are entitled to treat all use of the Service made using the admin user Login or any Customer Issued Login as use on your behalf and that you have authorised, and you are responsible for the payment of any Fees which arise in relation to that use.

7. WARRANTIES AND LIABILITY

7.1 Exclusion of other terms

We will provide the Service with due care and skill. Otherwise, to the extent permitted by law, and except as expressly provided in this Agreement, all terms, conditions, warranties and representations (in each case whether express, implied, statutory or otherwise) relating in any way to the Service, any Incidental Supplies or this Agreement are excluded.

7.2 Specific exclusions

To the extent permitted by law:

- (a) we do not promise that the Service will be available at all times or fault free, and you agree that from time to time it may not be available including for maintenance reasons or due to unexpected outages; and
- (b) we exclude all liability in relation to any fault or failure in the supply of the Service, or any Incidental Supplies, involving any act, omission or event outside our reasonable control, including any equipment failure, power failure, fire, flood, water, labour dispute or shortage, utility curtailment, explosion, emergency, civil disturbance, war, epidemic or pandemic, act of God, governmental action or act or omission of any Supplier or other person. If we become aware of any such fault or failure, then we will use reasonable endeavours to address it.

7.3 General limitation of liability

Without limiting clause 7.4, and to the extent permitted by law, any liability of ours in connection with, the Service, any Incidental Supplies or this Agreement:

- (a) under any condition or warranty that by law cannot be excluded;
- (b) under any consumer guarantee or other right under any law; or
- (c) on any other basis (including contract or negligence),

is, where permitted by law, limited at our option to the replacement, repair or resupply of the relevant goods or service or the payment of the cost of same.

In addition, without limiting clause 7.4, and to the extent permitted by law, the maximum total amount of our liability to you in respect of all Loss

accruing in any calendar month (whether in contract, tort, under statute or otherwise) in connection with the Service, any Incidental Supplies or this Agreement is the Fees payable for the Service for that month.

7.4 Exclusion of categories of loss

The following applies only to the extent permitted by law. All liability of ours is excluded in respect of any indirect or consequential Loss suffered or incurred by you, in relation to:

- (a) the Service or any Incidental Supplies;
- (b) any delay or failure in providing them; or
- (c) otherwise under or in connection with this Agreement,

and in any event (including where amounting to a direct loss) for any lost profits, revenue, goodwill or data or any corrupted data, even if we knew or should have known of the possibility of such loss or corruption.

7.5 Exceptions

Clauses 7.3 and 7.4 do not apply to any liability of ours:

- (a) for any unlawful act, wilful misconduct, theft or fraud (or involvement in same) by us or our personnel; or
- (b) any liability of ours under clause 4 (Confidentiality).

7.6 Indemnity

To the maximum extent permitted by law, you hereby indemnify and must keep indemnified us against all Losses incurred by us in relation in any way to:

- (a) any breach of this Agreement or negligence by you; or
- (b) any claim by you against any Supplier.

This indemnity may be enforced by us before and without incurring any expense or making any payment to any person.

8. TERMINATION, SUSPENSION AND EXPIRY

8.1 Term

Upon the expiry of the Initial Term, this Agreement (and the Term) will automatically be extended for a further period equal in length to the Initial Term unless you have notified us, by no later than the date 14 days before the end of the current Term, that you wish this Agreement to cease upon the expiry of the current Term. This paragraph will then apply on an iterative basis at the end of each Term as extended under this clause.

This Agreement applies until the earlier of expiry of the Term or termination in accordance with this clause 8. This Agreement may not be terminated except in in the circumstances, and in the manner, set out in this clause 8.

8.2 Termination for cause

Either party may terminate this Agreement where the other party breaches any of its obligations (other than an obligation to make any payment), or any warranty, under this Agreement and does not remedy that breach (if capable of being remedied) within 30 days of receiving notification of the breach;

We may terminate this Agreement, or suspend or alter provision to you of all or part of the Service or any related functionality, with immediate effect by written notice to you if you fail to make any payment (including any periodic Fee) when due under this Agreement.

If under clause 9 we notify you of an amendment to this Agreement and the amendment is not acceptable to you then you may terminate this Agreement by giving us not less than 14 days' notice with effect no later than the date that the amendment takes effect.

8.3 Termination without cause

Either you or we may terminate this Agreement at any time by giving not less than 30 days prior written notice to the other. You must continue to pay any Fees payable in relation to the period before termination takes effect.

8.4 Effect of termination, suspension or expiry

Upon the termination, suspension or expiry of this Agreement we may disable the admin user Login and all Customer Issued Logins and cease providing the Service to you. You will have no right to any refund of any Fees upon any termination, or in relation to any period of suspension (or alteration) of the provision of the Service to you, except as follows:

- (a) in the case of termination by us under clause 8.3 - if you have paid Fees in advance in relation to the period after the date that termination takes effect then we will promptly refund them to you on a pro rata basis in relation to that period;

- (b) in the case of termination by you under clause 8.3 - if you have paid Fees in advance in relation to the period after the date that termination takes effect then we may, in our discretion, refund part of them to you (but are not obliged to do so); and
- (c) to the extent (if any) that the law requires otherwise.

The termination of this Agreement will not affect the accrued rights of either party as at the date of termination. Clauses 2 to 12 will survive the termination of this Agreement, as will any other provision that by its nature is intended to survive termination.

9. CHANGES

9.1 Changes to this Agreement

We may amend this Agreement (including the Fees and Billing Arrangements) in any way at any time by notice to you. Any such amendment will not take effect earlier than 30 days after the date on which we send the notice.

9.2 Changes to the Service

We may change the Service from time to time (including by making additions or deletions) without prior notice to you. Changes we may make include changing the type of browser software required to use the Service and changing the tools included in the Service or the way that they operate. We do not ordinarily intend to reduce the functionality of the Service as a result of any change, but may do so. Where in our view it is necessary or desirable, we will update the User Guide correspondingly, either before or after the change takes effect.

10. NOTICES

Any notice or other written communication given under or in connection with this agreement by either party to the other must be sent by email (or, if to you, then alternatively by ordinary prepaid mail) to the corresponding address set out in the Details, unless either party notifies the other of a change of the relevant address.

Each party must ensure that at all times the contact details (including email address) applicable to that party under this clause is current, and endeavour to ensure it is operational.

An email will be taken to have been served at the time of sending, unless within 24 hours of it being sent the sender receives a manual or automated response indicating that it was not delivered successfully.

11. MISCELLANEOUS

11.1 Nature of relationship

The relationship between you and us is that of independent contracting parties. No agency, partnership, fiduciary or trustee relationship will arise between us as a result of this or any related agreement.

11.2 Applicable law

This Agreement is to be construed according to, and is governed by, the laws of Victoria, Australia. You and we submit to the non-exclusive jurisdiction of the courts in and of Victoria in relation to any dispute arising under this Agreement.

11.3 Assignment and subcontracting

You may not transfer or assign your rights or obligations under this Agreement to any other person. We may subcontract our obligations under this Agreement. We may assign or novate this agreement to a related body corporate or any person that purchases all or substantially all of our business or assets in relation to the Service. You must execute any form of agreement or deed prepared by us to give effect to such an assignment or novation, provided that the assignment or novation does not effect any amendment (other than the change of parties with effect from the relevant date) to the actual provisions of this document that is to your disadvantage.

11.4 Entire agreement

Apart from and the separate direct debit agreement with you in relation to payment of the Fees, this Agreement constitutes the entire agreement between us and you in relation to its subject matter. Any prior arrangements, agreements, representations or undertakings are superseded and, except as expressly provided, each party warrants that it has not relied on any arrangement, agreement, representation or understanding which is not expressly set out in this Agreement or incorporated by reference.

12. INTERPRETATION

12.1 Dictionary

In this Agreement the following terms have the corresponding meaning:

Agreement means these Terms and Conditions, the Details, the applicable description of the Fees and our Privacy Policy.

Alto Cibus (or **us** or **we**) means Altocibus Pty Ltd ACN 606 397 380.

Billing Arrangements mean the billing arrangements specified in the Details.

Confidential Information of a party to this Agreement means all information of a confidential nature of or relating to that party, including anything which is indicated to be subject to an obligation of confidence which is disclosed by that party to the other party in relation to this Agreement, or that comes to the knowledge or into the possession of the other party in connection with this Agreement. Confidential Information of yours includes all Source Systems Data. Confidential Information of ours includes the terms of this Agreement, our business, affairs, networks, customers, products, developments, trade secrets, know-how, pricing structures, the Service, and any information related to the supply of the Service by us to you.

Content means any information, data, document, picture, graphic, video, audio, text or other content, in each case in any form.

Details means the relevant details contained in the electronic application to use the Service completed by you via the Website, as varied by you from time to time via the Website.

Fees means the fees (if any), charges, interest and other amounts described or referred to in this Agreement or the Details, as amended from time to time in accordance with this Agreement.

Incidental Supplies means any goods or services (including software, configuration, advice or delivery) provided in connection with the Service.

Initial Term means the period described in the Details.

Loss means any loss, damage, cost, interest, expense, fee, penalty, fine, forfeiture, assessment, demand, action, suit, claim, proceeding, cause of action, liability or damages incurred by a person, and includes legal costs on an indemnity basis and indirect or consequential losses.

Permitted User means an individual who is an employee of yours.

Privacy Law means any law relating to the privacy of information about an individual (including its collection, storage, use or destruction) and includes the Privacy Act 1988 (Cth).

Privacy Policy means our privacy policy from time to time, as displayed on the Website.

Service means the provision of an online service (as varied from time to time by us) that provides selected functionality of the business dashboard integration software known as "Sideboard Control", as that selected functionality is described on the Website or in the User Guide (and subject to the restrictions or limitations included in the applicable description). You acknowledge that the extent of functionality provided (and corresponding Fees) may depend up on the version of the Service specified in the Details.

Source Systems Data has the meaning given in clause 3.1.

Supplier means any person from whom we purchase any service in connection with the supply of the Service.

Term means the Initial Term, plus any extension of that period under clause 8.1.

User Guide means any instructions or guide provided or published by us from time to time in relation to the Service and its use by users.

Website means the website at www.sideboardcontrol.com

you means the Customer described in the Details.

12.2 Rules of interpretation

In this Agreement:

- (a) **Headings.** Headings will be ignored in construing this document.
- (b) **Inclusive Terms.** Use of inclusive terms such as "includes" or "including" will be read as "includes, without limitation" or "including, without limitation".
- (c) **Numbers.** Words importing the singular include the plural and vice versa.
- (d) **Persons.** References to persons include corporations.
- (e) **Writing.** References to writing include any mode of representing or reproducing words in visible form, and include email transmissions and electronic messaging.