

Lotus Honolulu Terms of Use

Last Updated: [01/14/19]

Welcome, and thank you for your interest in the Lotus Honolulu Hotel (the “**Hotel**”) website at www.lotushonoluluhotel.com (the “**Site**”) operated by 2885 DH Management LLC (“**DH Management**,” “**we**,” or “**us**”). These Terms of Use are a legally binding contract between you and DH Management regarding your use of the Site.

PLEASE READ THE FOLLOWING TERMS CAREFULLY.

BY CLICKING “I ACCEPT,” OR OTHERWISE ACCESSING OR USING THE SITE, YOU AGREE THAT YOU HAVE READ AND UNDERSTOOD, AND, AS A CONDITION TO YOUR USE OF THE SITE, YOU AGREE TO BE BOUND BY, THE FOLLOWING TERMS AND CONDITIONS, INCLUDING THE LOTUS HONOLULU PRIVACY POLICY (TOGETHER, THESE “TERMS”). IF YOU ARE NOT ELIGIBLE, OR DO NOT AGREE TO THE TERMS, THEN YOU DO NOT HAVE OUR PERMISSION TO USE THE SITE. YOUR USE OF THE SITE, AND DH MANAGEMENT’S PROVISION OF THE SITE TO YOU, CONSTITUTES AN AGREEMENT BY DH MANAGEMENT AND BY YOU TO BE BOUND BY THESE TERMS.

ARBITRATION NOTICE. Except for certain kinds of disputes described in Section 13, you agree that disputes arising under these Terms will be resolved by binding, individual arbitration, and BY ACCEPTING THESE TERMS, YOU AND DH MANAGEMENT ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY CLASS ACTION OR REPRESENTATIVE PROCEEDING. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury. (See Section 13.)

1. **Site Overview.** The Site provides visitors with information about the Hotel.
2. **Eligibility.** You must be at least 18 years old to use the Site. By agreeing to these Terms, you represent and warrant to us that: (a) you are at least 18 years old; (b) you have not previously been suspended or removed from the Site; and (c) your registration and your use of the Site is in compliance with any and all applicable laws and regulations. If you are an entity, organization, or company, the individual accepting these Terms on your behalf represents and warrants that they have authority to bind you to these Terms and you agree to be bound by these Terms.
3. **Licenses**
 - 3.1 **Limited License.** Subject to your complete and ongoing compliance with these Terms, DH Management grants you, solely for your personal,

non-commercial use, a limited, non-exclusive, non-transferable, non-sublicensable, revocable license to access and use the Site.

3.2 **License Restrictions.** Except and solely to the extent such a restriction is impermissible under applicable law, you may not: (a) reproduce, distribute, publicly display, or publicly perform the Site; (b) make modifications to the Site; or (c) interfere with or circumvent any feature of the Site, including any security or access control mechanism. If you are prohibited under applicable law from using the Site, you may not use the Site.

3.3 **Feedback.** If you choose to provide input and suggestions regarding problems with or proposed modifications or improvements to the Site or Hotel ("**Feedback**"), then you hereby grant DH Management an unrestricted, perpetual, irrevocable, non-exclusive, fully-paid, royalty-free right to exploit the Feedback in any manner and for any purpose, including to improve the Site and create other products and services.

4. **Ownership; Proprietary Rights.** The Site is owned and operated by DH Management. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Site ("**Materials**") provided by DH Management are protected by intellectual property and other laws. All Materials included in the Site are the property of DH Management or its third party licensors. Except as expressly authorized by DH Management, you may not make use of the Materials. DH Management reserves all rights to the Materials not granted expressly in these Terms.

5. **Third Party Terms**

5.1 **Third Party Services.** DH Management may provide tools through the Site that enable you to export information to third party services, including through our implementation of third party buttons (such as "like" or "share" buttons). By using one of these tools, you agree that DH Management may transfer that information to the applicable third party service. Third party services are not under DH Management's control, and, to the fullest extent permitted by law, DH Management is not responsible for any third party service's use of your exported information.

5.2 **Bookings.** The Site may also contain links to third party websites or services. For example, the booking engine that enables users to book a stay at the Hotel is provided by Sabre Hospitality Solutions. Use of the booking engine is subject to the applicable Sabre Hospitality Solutions terms and conditions. You agree to comply with all terms and conditions

that apply to your booking, including without limitation, any terms of service, privacy policies, booking conditions, cancellation terms, or payment terms. Linked websites and third party services are not under DH Management's control, and DH Management is not responsible for their content.

5.3 **Third Party Software.** The Site may include or incorporate third party software components that are generally available free of charge under licenses granting recipients broad rights to copy, modify, and distribute those components ("**Third Party Components**"). Although the Site is provided to you subject to these Terms, nothing in these Terms prevents, restricts, or is intended to prevent or restrict you from obtaining Third Party Components under the applicable third party licenses or to limit your use of Third Party Components under those third party licenses.

6. **Monitoring Content.** DH Management does not control and does not have any obligation to monitor: (a) any content made available by third parties; or (b) the use of the Site by its users. You acknowledge and agree that DH Management reserves the right to, and may from time to time, monitor any and all information transmitted or received through the Site for operational and other purposes. If at any time DH Management chooses to monitor the content, DH Management still assumes no responsibility or liability for content or any loss or damage incurred as a result of the use of content. During monitoring, information may be examined, recorded, copied, and used in accordance with our Privacy Policy.

7. **Prohibited Conduct.** BY USING THE SITE YOU AGREE NOT TO:

- a. use the Site for any illegal purpose or in violation of any local, state, national, or international law;
- b. harass, threaten, demean, embarrass, or otherwise harm any other user of the Site;
- c. violate, or encourage others to violate, any right of a third party, including by infringing or misappropriating any third party intellectual property right;
- d. interfere with security-related features of the Site, including by: (i) disabling or circumventing features that prevent or limit use or copying of any content; or (ii) reverse engineering or otherwise attempting to discover the source code of any portion of the Site except to the extent that the activity is expressly permitted by applicable law;
- e. interfere with the operation of the Site or any user's enjoyment of the Site, including by: (i) uploading or otherwise disseminating any virus, adware,

spyware, worm, or other malicious code; (ii) making any unsolicited offer or advertisement to another user of the Site; (iii) collecting personal information about another user or third party without consent; or (iv) interfering with or disrupting any network, equipment, or server connected to or used to provide the Site;

- f. perform any fraudulent activity including impersonating any person or entity, claiming a false affiliation, or falsifying your age or date of birth; or
- g. attempt to do any of the acts described in this Section 7 or assist or permit any person in engaging in any of the acts described in this Section 7.

8. **Modification of these Terms.** We reserve the right to change these Terms on a going-forward basis at any time. Please check these Terms periodically for changes. If a change to these Terms materially modifies your rights or obligations, we may require that you accept the modified Terms in order to continue to use the Site. Material modifications are effective upon your acceptance of the modified Terms. Immaterial modifications are effective upon publication. Except as expressly permitted in this Section 8, these Terms may be amended only by a written agreement signed by authorized representatives of the parties to these Terms. Disputes arising under these Terms will be resolved in accordance with the version of these Terms that was in effect at the time the dispute arose.

9. Term, Termination and Modification

9.1 **Term.** These Terms are effective beginning when you accept the Terms or first access or use the Site, and ending when terminated as described in Section 9.2.

9.2 **Termination.** If you violate any provision of these Terms, your authorization to access the Site and these Terms automatically terminate. In addition, DH Management may, at its sole discretion, terminate these Terms, or suspend or terminate your access to the Site, at any time for any reason or no reason, with or without notice. You may terminate these Terms at any time by contacting customer service at info@lotushonolulu.com.

9.3 **Effect of Termination.** Upon termination of these Terms: (a) your license rights will terminate and you must immediately cease all use of the Site; (b) you will no longer be authorized to access the Site; and (c) Sections 3.3, 4, 9.3, 10, 11, 12, 13 and 14 will survive.

9.4 **Modifications.** DH Management reserves the right to modify or discontinue the Site at any time (including by limiting or discontinuing certain features of the Site), temporarily or permanently, without notice to

you. DH Management will have no liability for any change to the Site or any suspension or termination of your access to or use of the Site.

10. **Indemnity.** To the fullest extent permitted by law, you are responsible for your use of the Site, and you will defend and indemnify DH Management and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (together, the “**DH Management Entities**”) from and against every claim brought by a third party, and any related liability, damage, loss, and expense, including reasonable attorneys’ fees and costs, arising out of or connected with: (a) your unauthorized use of, or misuse of, the Site; (b) your violation of any portion of these Terms, any representation, warranty, or agreement referenced in these Terms, or any applicable law or regulation; (c) your violation of any third party right, including any intellectual property right or publicity, confidentiality, other property, or privacy right; or (d) any dispute or issue between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (without limiting your indemnification obligations with respect to that matter), and in that case, you agree to cooperate with our defense of those claims.

11. **Disclaimers; No Warranties**

THE SITE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SITE ARE PROVIDED “AS IS” AND ON AN “AS AVAILABLE” BASIS. DH MANAGEMENT DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE HOTEL, SITE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SITE, INCLUDING: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (B) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. DH MANAGEMENT DOES NOT WARRANT THAT THE SITE OR ANY PORTION OF THE SITE, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SITE, WILL BE ACCURATE, TIMELY, CURRENT, COMPLETE, UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND DH MANAGEMENT DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED. FURTHER, DH MANAGEMENT DOES NOT GUARANTEE THAT ANY ROOMS, FACILITIES, OR PROMOTIONAL OR SPECIAL OFFERS DISPLAYED ON THE SITE WILL BE AVAILABLE AT THE TIME OF YOUR RESERVATION REQUEST.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SITE OR DH MANAGEMENT ENTITIES OR ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SITE WILL CREATE ANY WARRANTY REGARDING ANY OF THE DH MANAGEMENT ENTITIES OR THE SITE THAT IS NOT EXPRESSLY STATED IN THESE TERMS. WE ARE NOT

RESPONSIBLE FOR ANY DAMAGE THAT MAY RESULT FROM THE SITE AND YOUR DEALING WITH ANY OTHER SITE USER. YOU UNDERSTAND AND AGREE THAT YOU USE ANY PORTION OF THE SITE AT YOUR OWN DISCRETION AND RISK, AND THAT WE ARE NOT RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE SITE) OR ANY LOSS OF DATA.

THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS SECTION APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. DH Management does not disclaim any warranty or other right that DH Management is prohibited from disclaiming under applicable law.

12. Limitation of Liability

TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL THE DH MANAGEMENT ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, OR ANY OTHER INTANGIBLE LOSS) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SITE OR ANY MATERIALS OR CONTENT ON THE SITE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT ANY DH MANAGEMENT ENTITY HAS BEEN INFORMED OF THE POSSIBILITY OF DAMAGE.

EXCEPT AS PROVIDED IN SECTION 13.4 AND TO THE FULLEST EXTENT PERMITTED BY LAW, THE AGGREGATE LIABILITY OF THE DH MANAGEMENT ENTITIES TO YOU FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY PORTION OF THE SITE OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO \$100.

EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS INTENDED TO AND DOES ALLOCATE THE RISKS BETWEEN THE PARTIES UNDER THESE TERMS. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 12 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

13. Dispute Resolution and Arbitration

- 13.1 **Generally.** In the interest of resolving disputes between you and DH Management in the most expedient and cost effective manner, and except as described in Section 13.2, you and DH Management agree that every dispute arising in connection with these Terms will be resolved by binding arbitration. Arbitration is less formal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. This agreement to arbitrate disputes includes all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation, or any other legal theory, and regardless of whether a claim arises during or after the termination of these Terms. YOU UNDERSTAND AND AGREE THAT, BY ENTERING INTO THESE TERMS, YOU AND DH MANAGEMENT ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.
- 13.2 **Exceptions.** Despite the provisions of Section 13.1, nothing in these Terms will be deemed to waive, preclude, or otherwise limit the right of either party to: (a) bring an individual action in small claims court; (b) pursue an enforcement action through the applicable federal, state, or local agency if that action is available; (c) seek injunctive relief in a court of law in aid of arbitration; or (d) to file suit in a court of law to address an intellectual property infringement claim.
- 13.3 **Arbitrator.** Any arbitration between you and DH Management will be settled under the Federal Arbitration Act and administered by the American Arbitration Association (“**AAA**”) under its Consumer Arbitration Rules (collectively, “**AAA Rules**”) as modified by these Terms. The AAA Rules and filing forms are available online at www.adr.org, by calling the AAA at 1-800-778-7879, or by contacting DH Management. The arbitrator has exclusive authority to resolve any dispute relating to the interpretation, applicability, or enforceability of this binding arbitration agreement.
- 13.4 **Notice of Arbitration; Process.** A party who intends to seek arbitration must first send a written notice of the dispute to the other party by certified U.S. Mail or by Federal Express (signature required) or, only if that other party has not provided a current physical address, then by electronic mail (“**Notice of Arbitration**”). DH Management’s address for Notice is: 2885 DH Management LLC, 1288 Ala Moana Blvd., Suite 208, Honolulu, HI, 96814. The Notice of Arbitration must: (a) describe the nature and basis of the claim or dispute; and (b) set forth the specific relief sought (“**Demand**”). The parties will make good faith efforts to

resolve the claim directly, but if the parties do not reach an agreement to do so within 30 days after the Notice of Arbitration is received, you or DH Management may commence an arbitration proceeding. All arbitration proceedings between the parties will be confidential unless otherwise agreed by the parties in writing. During the arbitration, the amount of any settlement offer made by you or DH Management must not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. If the arbitrator awards you an amount higher than the last written settlement amount offered by DH Management in settlement of the dispute prior to the award, DH Management will pay to you the higher of: (i) the amount awarded by the arbitrator; or (ii) \$10,000.

- 13.5 **Fees.** If you commence arbitration in accordance with these Terms, DH Management will reimburse you for your payment of the filing fee, unless your claim is for more than \$10,000, in which case the payment of any fees will be decided by the AAA Rules. Any arbitration hearing will take place at a location to be agreed upon in Honolulu County, California, but if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted: (a) solely on the basis of documents submitted to the arbitrator; (b) through a non-appearance based telephone hearing; or (c) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In that case, you agree to reimburse DH Management for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator must issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.
- 13.6 **No Class Actions.** YOU AND DH MANAGEMENT AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and DH Management agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.

- 13.7 **Modifications to this Arbitration Provision.** If DH Management makes any future change to this arbitration provision, other than a change to DH Management's address for Notice of Arbitration, you may reject the change by sending us written notice within 30 days of the change to DH Management's address for Notice of Arbitration, in which case your account with DH Management will be immediately terminated and this arbitration provision, as in effect immediately prior to the changes you rejected will survive.
- 13.8 **Enforceability.** If Section 13.6 is found to be unenforceable or if the entirety of this Section 13 is found to be unenforceable, then the entirety of this Section 13 will be null and void and, in that case, the parties agree that the exclusive jurisdiction and venue described in Section 14.2 will govern any action arising out of or related to these Terms.

14. Miscellaneous

- 14.1 **General Terms.** These Terms, together with the Privacy Policy and any other agreements expressly incorporated by reference into these Terms, are the entire and exclusive understanding and agreement between you and DH Management regarding your use of the Site. You may not assign or transfer these Terms or your rights under these Terms, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice or consent. The failure to require performance of any provision will not affect our right to require performance at any other time after that, nor will a waiver by us of any breach or default of these Terms, or any provision of these Terms, be a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and will not have any impact on the interpretation of any provision. Throughout these Terms the use of the word "including" means "including but not limited to". If any part of these Terms is held to be invalid or unenforceable, the unenforceable part will be given effect to the greatest extent possible, and the remaining parts will remain in full force and effect.
- 14.2 **Governing Law.** These Terms are governed by the laws of the State of Hawaii without regard to conflict of law principles. You and DH Management submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Honolulu County, Hawaii for resolution of any lawsuit or court proceeding permitted under these Terms. We operate the Site from our offices in Hawaii, and we make no representation that Materials included in the Site are appropriate or available for use in other locations.

- 14.3 **Privacy Policy.** Please read the DH Management [Privacy Policy](#) carefully for information relating to our collection, use, storage, disclosure of your personal information. The DH Management Privacy Policy is incorporated by this reference into, and made a part of, these Terms.
- 14.4 **Additional Terms.** Please note that additional terms and conditions may apply to your booking or stay at the Hotel. Your use of the Site is subject to all additional terms, policies, rules, or guidelines provided by us applicable to the Site or certain features of the Site that we may post on or link to from the Site (the “**Additional Terms**”). All Additional Terms are incorporated by this reference into, and made a part of, these Terms.
- 14.5 **Consent to Electronic Communications.** By using the Site, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that those communications be in writing.
- 14.6 **Contact Information.** The Site is offered by 2885 DH Management LLC, located at 1288 Ala Moana Blvd., Suite 208, Honolulu, HI 96814. You may contact us by sending correspondence to that address or by emailing us at info@lotushonolulu.com. You can access a copy of these Terms by clicking [here](#):
- 14.7 **Notice to California Residents.** If you are a California resident, under California Civil Code Section 1789.3, you may contact the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs in writing at 1625 N. Market Blvd., Suite S-202, Sacramento, California 95834, or by telephone at (800) 952-5210 in order to resolve a complaint regarding the Site or to receive further information regarding use of the Site.
- 14.8 **No Support.** We are under no obligation to provide support for the Site. In instances where we may offer support, the support will be subject to published policies.
- 14.9 **International Use.** The Site is intended for visitors located within the United States. We make no representation that the Site is appropriate or available for use outside of the United States. Access to the Site from countries or territories or by individuals where such access is illegal is prohibited.