



These terms and conditions apply to all Products and Services supplied by GOTO PLUS unless a separate user agreement applies.

By completing and submitting a Registration Form to GOTO PLUS, clicking "I Agree", or using a GOTO PLUS Product, you the "Customer" acknowledge that you have read and agree to the following terms and conditions.

1. Definitions and Interpretation

1.1 Definitions

In these terms and conditions, unless the context otherwise requires:

Agreement means the agreement constituted between GOTO PLUS and the Customer comprising these terms and conditions and any applicable **Product Schedules**.

Booking Sites means websites or applications through which a potential Guest can view, compare and reserve accommodation plus related goods and services.

Business Day means a day that is not a Saturday, Sunday or public holiday.

Confidential Information of a party means any information marked as confidential or which, by its nature, the other party knows, or ought to know, is confidential (regardless of its form and when it was acquired) and includes trade secrets, technical knowledge, concepts, designs, plans, precedents, processes, methods, techniques, knowhow, innovations, ideas, procedures, research data, financial data, databases, personnel data, computer software and programs, customer and supplier information, correspondence and letters and papers of every description including all copies or extracts of same relating to the affairs or business of the party.

Control in relation to an entity means the capacity to determine the outcome of decisions about the entity's financial or operating policies.

Consequential Loss means:

- loss of revenue, profits or savings (actual or anticipated);
- loss of contracts or opportunities;
- loss of, or damage to, goodwill or reputation;
- loss arising from damage to credit rating or increased financing costs;
- loss of data or corruption of data;
- loss arising from business interruption or loss or damage resulting from wasted managed time; and
- any indirect, special, economic, incidental or consequential loss or damage, howsoever arising, whether based in contract (including under any indemnity), in tort (including negligence), in equity, under the provisions of any law or otherwise.

Customer Software Application means any software used by the Customer to manage bookings, including any property management system or central reservation system, but excluding any GOTO PLUS Software.

Customer Users means officers, employees, agents, contractors or representatives of the Customer.

Data Protection Requirements means any legislation, regulation, statute or order, which may apply from time to time, relating to the collection, storage or use of Personal Information including (without limitation) the Australian Privacy Act 1988 (Cth), the Australian Privacy Principles, the UK Data Protection Act 2018, the European Union General Data Protection Regulation, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and the Data Protection (Processing of Sensitive Personal Data) Order 2000.

Effective Date means the date of acceptance of these terms and conditions.

Fault means any fault which renders a Product and/or Service inoperable.

Fees means the fees payable by the Customer to GOTO PLUS for Products or Services provided under this Agreement, as specified in a relevant Sales Order Form.

Force Majeure Event means anything which prevents a party from performing, or delays the performance of, any of its obligations under this Agreement and is beyond the control of the affected party, including (without limitation):

- a force of nature (e.g. fire, storm or explosion) or act of God;
- any strike, lockout, industrial action, war, sabotage, riot, act of terrorism,

denial of service attack, insurrection, civil commotion, national emergency, epidemic, quarantine, radiation or radioactive contamination;

- any action or inaction by a Government Agency;
- a change in law; or
- a breakdown of plant, machinery, equipment or telecommunications or shortages of labour, transportation, fuel, power, plant, machinery, equipment or material (including short supply from the regular source or supplier).

Free Trial means a trial of the Products and/or Services by the Customer without charge, but subject to all other terms in this Agreement.

Government Agency means any government or public, statutory, governmental, supra-governmental, semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute.

Guest means a guest of the Property.

Hotel Data means all data relating to the Property, including (without limitation) room rates, room types, room availability, rate plans, restrictions, occupancy, Guests, reservations, images and content.

Insolvency Event means, in relation to a party, where:

- a receiver, manager, trustee, administrator, other controller or similar official is appointed over any of the assets or undertaking of the party;
- the party suspends payment of its debts;
- the party is unable to pay its debts when they are due;
- the party enters into or resolves to enter into any arrangement, composition or compromise with a creditor;
- the party ceases to carry on business;
- any action is taken to appoint an administrator;
- an application, order or action is made / taken for the winding up or dissolution of the party, otherwise than for the purpose of an amalgamation or reconstruction; or
- a party is presumed to be insolvent under any applicable statute, or threatens to do any of (a) – (g).

Intellectual Property Rights means all intellectual property rights, including the following rights:

- patents, copyright, rights in circuit layouts, registered and unregistered designs, trade marks, domain names, business names and any right to have confidential information kept confidential; and
- any application or right to apply for registration of any of the rights referred to in paragraph (a).

Interest Rate means 16% per annum.

PCI DSS means the Payment Card Industry Data Security Standard issued by the Payment Card Industry Security Council from time to time and available at: https://www.pcisecuritystandards.org/document_library?document=pci_dss.

Personal Information has the meaning given in the Data Protection Requirements.

Product means a product supplied by GOTO PLUS including (without limitation) "Occupancy Plus", "Xtranet Plus", "Transporter Plus", "Passenger Plus", "Pax Plus" and "Travel Agent Plus", each as more particularly specified in the relevant **Product Schedule**.

Product Schedule means a schedule describing the specifications and functionality of each Product, as updated from time to time and available on the Website.

Property means the building, dwelling or location from which the Customer provides accommodation to Guests.

Registration Form means the application form completed by a Customer.

Related Body Corporate means, in relation to any entity, a company that Controls the entity, a company that is under the Control of the entity or is Controlled by the same company that Controls the entity.

Sales Order Form means an order form or other communication between GOTO PLUS and the Customer which details the Products the Customer has ordered.

Sales Tax means any sales tax, value added tax (VAT), goods and services tax (GST) or similar tax in any applicable jurisdiction.

Service means the supply of one or more Products and may also include any of the following:

- installation, integration, maintenance, assistance or back up services;
- any related documentation and websites (including source code and databases);
- help desk systems and support;
- other connectivity applications and interfaces;
- conversion or adaptation of data and information on the Customer's systems; and
- the preparation, loading, uploading or provision of software, data, text, images, sounds, videos and other content.

GOTO PLUS means:

- for any Customer principally located in the Philippines, GOTO PLUS INC. PO Box 222 Subic Bay Freeport Zone, Zambales Philippines 2222;
- for any other Customer – GOTO PLUS Australia, PO Box 7119, Tathra, NSW 2550, Australia.

GOTO PLUS Infrastructure means any property or equipment (including computer hardware and software, electronic interfaces, platforms, databases, text, images, sounds, videos and other content) owned or used by GOTO PLUS which enable Customer to access or use the Products or Services.

GOTO PLUS Software means all software in the Products and GOTO PLUS Infrastructure.

Trial Period means the period specified by GOTO PLUS, in the Registration Form or otherwise.

Website means <https://legal.gotoplus.com>

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise:

- the singular includes the plural and conversely;
- a reference to a person includes a body corporate, an unincorporated body, enterprise, firm, trust, joint venture, syndicate or other entity and conversely;
- a reference to a clause or schedule is to a clause of or schedule to this Agreement;
- a reference to a party includes the party's successors, permitted assigns and Related Bodies Corporate;
- a reference to any legislation or part thereof includes any amendment, consolidation or replacement of it, and all regulations and statutory instruments issued under it;
- a reference to conduct includes, without limitation, any omission, statement or undertaking, whether or not in writing;
- a reference to parties to this Agreement includes any person who executes a deed of accession to it;
- if any payment by a party is due on a day which is not a Business Day, the due date will be the next Business Day in the same calendar month or, if none, the preceding Business Day; and
- if an obligation must be performed by 2 or more persons, it binds them jointly and individually.

2. Application of agreement

This Agreement commences on the Effective Date and continues to apply as long as GOTO PLUS continues to provide one or more Products or Services to the Customer, or otherwise terminated in accordance with clause 12 (**Term**).

3. Supply of Products

3.1 Supply

GOTO PLUS will supply the Products specified in the Sales Order Form, subject to the Customer for the duration of the Term in accordance with this Agreement.

3.2 Conditions to access and use

Access to the Products and Services is granted subject to the following conditions:

- they may only be used by the Customer Users;
- they must not be used to provide, in whole or in part, any service or functionality which is similar to the Products or competes with GOTO PLUS's business;
- the Customer must not reproduce or copy the GOTO PLUS Software in whole or in part except for backup and archive purposes; and
- they must not be used for any purpose other than the purpose for which it is supplied under this Agreement, including (without limitation):
 - for any improper or unlawful purpose;
 - to create for the purpose of, or in a manner that transmits, publishes or communicates material which is defamatory, offensive, abusive, indecent, discriminatory, menacing, unwanted, in breach of confidence, illegal or which brings GOTO PLUS or any of GOTO PLUS's agents into disrepute;
 - in any way which damages or interferes with GOTO PLUS Infrastructure or the supply of the Products to other GOTO PLUS customers;
 - to host or transmit information which contains viruses or other harmful code or data designed to interrupt, damage, destroy or limit the functionality of any software, hardware or equipment;
 - modify, reverse engineer, decompile, create other works from, or disassemble any software programs contained in the GOTO PLUS Software; or
 - for any benchmarking or competitive purpose or to develop a similar or competitive product.

3.3 Warranties

GOTO PLUS represents and warrants that:

- the Products will be supplied and supported by appropriately qualified and trained personnel acting with due skill, care and diligence;
- it holds and has complied with all permits, licenses and other governmental authorisations necessary for conducting, carrying out and continuing its operations and business and it owns, controls or has obtained any and all necessary rights, licenses, permits and clearances required to provide the Products;
- each Product will comply with the relevant **Product Schedule**; and
- it is PCI DSS compliant and will remain compliant for the duration of this

Agreement.

3.4 Warranty limitation

- The warranties provided in clause 3.3 are exhaustive and the Customer acknowledges and agrees that Products and Services are provided “as is” without any other warranty or condition, express, implied or statutory to the maximum extent permitted by law. GOTO PLUS specifically disclaims any implied warranties of title, merchantability, fitness for a particular purpose and non-infringement to the maximum extent permitted by law.
- GOTO PLUS does not guarantee continuous, uninterrupted access to the Products, GOTO PLUS Software and Services, and operation of the GOTO PLUS Software and the Website may be interfered with by numerous factors outside of GOTO PLUS’s control. The Customer is responsible for implementing appropriate security processes, systems and procedures to protect itself from the download of any virus, worms, Trojan horses or other code that has contaminating or destructive qualities.

3.5 Registration Form

- Prior to commencing the use or trial of a Product, the Customer must complete and submit a Registration Form to GOTO PLUS.
- By lodging the Registration Form, the Customer acknowledges that it has read and agrees to comply with these terms and conditions.

3.6 Application review and verification of identity

The Customer acknowledges that when assessing the application, GOTO PLUS may request additional information to verify the Customer’s identity, size and scale, either from the Customer or a third party (e.g. a credit agency). The Customer agrees to provide any information reasonably required for such purposes and authorises GOTO PLUS to contact any such third party to obtain relevant information.

3.7 Username and password

- GOTO PLUS will issue the Customer with a username and password to access the Products. The Customer must not disclose the username or password to any person (other than Customer Users) without the authorisation of GOTO PLUS.
- The Customer must maintain adequate security to ensure that no unauthorised person gains access to its username and password.
- The Customer is solely liable for any data input into the Products or GOTO PLUS Infrastructure by a:
 - Customer User;
 - person authorised by the Customer or a Customer User to use the username and password; or
 - person who has used the username and password as a result of the Customer’s failure to maintain adequate security.

3.8 Storage of credit card data

- The Customer must not store credit card data, including name, number, expiry details or CVV in any part of a Product or database which is not specifically designed for the collection or storage of credit card information, e.g. a free text field, where the data is stored unencrypted and freely accessible.
- The Customer indemnifies GOTO PLUS in respect of any loss or damage suffered as a result of, or in connection with, a failure to comply with this clause 3.8.

3.9 Ownership of Property

- Where the Customer is the manager of the Property on behalf of a Property owner, the Customer represents and warrants to GOTO PLUS that it is, and will remain for the duration of the Term, authorised by the Property owner to manage the Property and enter into this Agreement.
- GOTO PLUS may terminate this Agreement if the Customer's authorisation is terminated by the Property owner for any reason.
- Written notice from the Property owner will be sufficient evidence of such termination.

3.10 Suspension or termination for breach

GOTO PLUS may suspend or terminate access to any Products and Services in the event of any breach or suspected breach of clause 3.

3.11 Access to Hotel Data

The Customer acknowledges and agrees that if there is a dispute as to the ownership of the Customer's business or the Property, in addition to the right to suspend or terminate access to any Products under clause 3.10, GOTO PLUS may, in its sole discretion, allow the Property owner to download Hotel Data held on behalf of the Customer.

4. Fees and payment

4.1 Fees

The Customer must pay the Fees for the duration of the Term.

4.2 Trial Period and commencement of billing

- If a Free Trial is offered to the Customer, the Customer is entitled to use the relevant Products for the Trial Period free of charge.
- If the Customer does not wish to continue using the Products or Services after the Free Trial, it must terminate this Agreement by written notice to GOTO PLUS during the Trial Period.
- If the Customer does not terminate the Agreement in accordance with clause 4.2(b), GOTO PLUS will commence charging for the Products and Services from the first day following the Trial Period (**Billing Commencement Date**).

4.3 Invoicing and payment

GOTO PLUS will invoice the Customer monthly (in advance and/or in arrears) for Fees due under this Agreement. The Customer must pay the invoiced Fees by the due date for payment specified in the invoice in cleared funds without set-off, counterclaim or deduction of any kind including in respect of taxes, levies, imports, duties, charges (including intermediary bank charges) or fees.

4.4 Disputed invoices

- If the Customer disputes any part of an invoice submitted by GOTO PLUS, the Customer must notify GOTO PLUS in writing within 2 days of receipt of the invoice of the reasons for disputing the invoice and pay the undisputed amount on or before the due date for payment. If the Customer does not notify GOTO PLUS within 2 days of receipt of the invoice, the Customer will be deemed to have accepted the invoice as accurate.
- The parties must endeavour to resolve the disputed amount between themselves within 5 days of the notification being given by the Customer. Failing this, the dispute resolution procedure set out in clause 16 applies.

4.5 Failure to pay

If the Customer fails to make a payment due under this Agreement when called upon to do so, GOTO PLUS may do any one or more of the following either instead of, or in addition to terminating the Agreement in accordance with clause 12.1(a):

- charge the Customer default interest on the overdue amount from the due date for payment up to the date of actual payment at the Interest Rate;
- suspend access to the Products until all amounts due have been paid (including any interest); and
- charge the Customer an AU\$150 reinstatement charge to reactivate any suspended account.

4.6 Sales Tax

- All Fees are exclusive of Sales Tax unless stated otherwise by GOTO PLUS in writing.
- If Sales Tax is applicable to any supply made by GOTO PLUS under this Agreement, GOTO PLUS may add to the Fees an amount equal to the applicable Sales Tax.
- The Customer agrees to pay GOTO PLUS such Sales Tax charges in the same manner and at the same time as the payment for the relevant Fees.
- GOTO PLUS will issue tax invoices to the Customer for the purposes of Sales Tax.
- If required by applicable law, GOTO PLUS will give the Customer an adjustment note arising from the adjustment event relating to a taxable supply made under, or in connection with this Agreement within 30 days after the date GOTO PLUS becomes aware of the adjustment event.

4.7 Annual price increase

Fees will increase by 5% annually following the initial Term.

5. Customer's obligations

5.1 Use of Products and Services

The Customer must:

- maintain the necessary infrastructure to support the provision of the Products and Services;
- ensure that all information and content inputted or uploaded to the Products or GOTO PLUS Infrastructure is accurate and up to date;
- comply with any operational procedures and maintain any technical specifications specified in any Product Schedule, or documentation provided by GOTO PLUS, or other reasonable directions given by GOTO PLUS from time to time in relation to the Products;
- comply with any applicable law and the requirements or directions of Government Agencies;
- provide GOTO PLUS with all information, assistance and co-operation reasonably requested by GOTO PLUS in order to enable GOTO PLUS to meet its obligations under this Agreement;
- not do, or omit to do, anything which the Customer is aware or ought reasonably to be aware, could have an adverse effect on the operation or maintenance of the Products or GOTO PLUS Infrastructure; and
- provide GOTO PLUS and its contractors, agents and employees with prompt access to the Customer Software Application and to the Customer's personnel, equipment, data and information as is reasonably required for the purpose of delivering the Products.

5.2 Site content

The Customer is solely liable for all data uploaded into the GOTO PLUS Infrastructure and must ensure that all information and content provided is accurate and up to date. GOTO PLUS expressly disclaims any liability resulting from the publication of any inaccurate, defamatory, false or misleading information and the Customer indemnifies GOTO PLUS in respect of any loss, cost, damage or other liability incurred as a result of such data being included or available in a Product.

6. Maintenance and suspension

6.1 Maintenance

- GOTO PLUS may perform scheduled and unscheduled maintenance or perform updates in relation to the GOTO PLUS Infrastructure or the Products from time to time.
- GOTO PLUS must use reasonable efforts to give the Customer notice before undertaking any scheduled maintenance and must use reasonable endeavours to perform all scheduled maintenance at times likely to

minimise interference to the Customer. If GOTO PLUS is required to perform unscheduled or urgent maintenance, GOTO PLUS must use reasonable efforts to provide prior notice to the Customer, however the Customer accepts that such prior notice may not always be possible.

6.2 Suspension by GOTO PLUS

GOTO PLUS may without liability and with immediate effect suspend a Product or Service or access to the GOTO PLUS Infrastructure for as long as GOTO PLUS, acting reasonably, considers it necessary to comply with any law, protect any person, system or asset or equipment from harm, or enable authorised persons to attend to any emergency.

7. Support

7.1 Support

The GOTO PLUS support team will deal directly with the Customer's centralised support function regarding basic configuration changes for the Property and otherwise will provide basic support to enquiries during the Customer's local business hours.

7.2 Room mapping for the Channel Manager

The Customer must perform all room mappings through the software interface for all channels that are enabled for dynamic room mapping. GOTO PLUS must perform activation of all new channels and room mappings for channels that are not enabled for dynamic room mapping.

8. Fault reporting and restoration

8.1 Fault reporting

- The Customer must report Faults to the GOTO PLUS support team without undue delay.
- Before reporting a Fault, the Customer should take all reasonable steps to ensure that the Fault is with the Product and not caused by any of the Customer Software Applications or any Customer content or equipment.
- The Customer is responsible for repairing faults relating to any Customer Software Applications, content or equipment.

8.2 Charges for restoration

The Customer is liable for all costs incurred by GOTO PLUS in restoring a Product or Service where the Fault arises as a result of customer misuse.

9. Personal Information and privacy

9.1 Personal Data

- For the purposes of this clause 9, "Personal Data" means the Personal Information of a Customer, its employees and Guests.
- If Personal Data is collected, used, handled, processed and/or transferred under this Agreement by GOTO PLUS on behalf of the Customer, the

Customer is the data controller and GOTO PLUS is the data processor. The purpose of processing Personal Data by GOTO PLUS is the performance of Services pursuant to this Agreement.

- If Personal Data is collected, used, handled, processed and/or transferred under this Agreement, each party must comply with the applicable Data Protection Requirements and the terms of this Agreement.

9.2 GOTO PLUS's obligations

GOTO PLUS must:

- process Personal Data only in accordance with the Customer's reasonable and lawful written instructions from time to time, for the purposes of performing its obligations under this Agreement and for no other purpose except as otherwise stated in clause 9.4 of this Agreement or as required by law;
- implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of processing the Personal Data, taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing;
- ensure that persons authorised by it to process the Personal Data are under confidentiality obligations in respect of the Personal Data;
- if requested, at the Customer's cost, provide reasonable assistance to the Customer in complying with the rights of data subjects and with the Customer's statutory obligations relating to data security, data breach notification, data protection impact assessments and related prior consultation procedures, taking into account the nature of processing and the information available to GOTO PLUS;
- promptly notify the Customer after becoming aware of a breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised access to or disclosure of Personal Data and GOTO PLUS and the Customer shall act in good faith in developing agreed public statements and any necessary notifications to data subjects in respect of any of the foregoing provided that nothing in this paragraph prevents a party from complying with its obligations under Data Protection Requirements;
- save only to the extent required by law, after expiry or termination of this Contract, in accordance with clause 12.5, return to the Customer or destroy all Personal Data in the possession or control of GOTO PLUS;
- make available to the Customer such information as is reasonably necessary to demonstrate GOTO PLUS's compliance with this clause 9;
- at the Customer's cost, allow the Customer to appoint an independent auditor to audit and inspect GOTO PLUS's compliance with this clause 9. Such audit may occur once per calendar year, unless Data Protection Requirements applicable to the Customer require more frequent audit. Such an audit shall be carried out during business hours and the Customer must provide at least 30 working days' notice of any such audit, unless the Customer can demonstrate that it has genuine suspicion that GOTO PLUS has breached its obligations in this clause 9 in which case the Customer

- must provide at least 2 working days' notice of any such audit;
- not transfer the Personal Data to a country outside the European Union without the authorisation of the Customer or as otherwise provided for in this Agreement unless the relevant territory ensures an adequate level of protection or appropriate standard contractual clauses approved by the EU have been put in place or other appropriate safeguards have been implemented; and
 - will have the general ability to appoint subcontractors who may process Personal Data in order to perform GOTO PLUS's obligations under this Agreement provided that the contracts with such subcontractors shall incorporate terms which are substantially the same as those set out in this clause 9 and which encompass the obligations referred to in Article 28(3) of the European Union General Data Protection Regulation. GOTO PLUS will notify the Customer of such subcontractors if and when they are appointed or replaced.

9.3 Customer's obligations

- The Customer warrants, represents and undertakes that all instructions given to GOTO PLUS by the Customer in respect of Personal Data will, at all times, be in accordance with the applicable Data Protection Requirements and will provide such evidence as GOTO PLUS requests to demonstrate that such instructions are in accordance with the applicable Data Protection Requirements.
- The Customer must ensure that any Personal Data it collects is collected and supplied to GOTO PLUS in a manner compliant with the Data Protection Requirements including by providing all notices and obtaining all consents required under the Data Protection Requirements in order for GOTO PLUS to process Personal Data fairly and lawfully in connection with the Services and in accordance with this Agreement and must immediately notify GOTO PLUS on becoming aware of Personal Data becoming inaccurate.
- If the Customer requests GOTO PLUS to transfer the Personal Data outside the European Union, the Customer must ensure that appropriate safeguards are in place to permit the transfer of the Personal Data outside the European Union.

9.4 Use and disclosure of Personal Information

The Customer acknowledges that the collection, use and storage of Personal Information of the Customer, Customer Users and Guests is necessary to enable GOTO PLUS to perform its obligations under this Agreement and for:

- purposes relating to the supply of the Services to the Customer, including:
 - billing and account management;
 - product and service development;
 - managing the Customer's relationship with GOTO PLUS;
 - marketing the Products and Services to the Customer; and
 - transferring data to and from Booking Sites; and
- the disclosure of Personal Information of the Customer, Customer Users

and Guests:

- to a Government Agency to assist in the investigation of crime or the enforcement of any laws; and
- to any third party as required by law.

9.5 Privacy Policy

GOTO PLUS must at all times comply with its Privacy Policy, available at the Website. If there is any inconsistency between GOTO PLUS's Privacy Policy and this clause 9, this clause 9 will prevail.

10. Confidentiality

10.1 Confidentiality obligations

Each party (**Recipient**) which receives Confidential Information of the other party (**Disclosing Party**) under this Agreement acknowledges that all Confidential Information provided to it, or to which it is exposed, is confidential to the Disclosing Party.

10.2 Loss suffered

The Recipient acknowledges and agrees that the Confidential Information is, by virtue of its special nature, valuable property of the Disclosing Party and that the Disclosing Party may suffer damage or loss by any disclosure by the Recipient of the Confidential Information.

10.3 Non-disclosure

The Recipient must:

- treat all Confidential Information as confidential and not make public or disclose to any other person that Confidential Information unless it has first obtained the written consent of Disclosing Party to do so;
- prevent third parties from gaining access to the Confidential Information; and
- upon the Disclosing Party's request or expiry or termination of this Agreement, deliver and surrender to the Disclosing Party all records of Confidential Information held by it.

10.4 Required disclosure

The Recipient may disclose Confidential Information if required to do so by a Government Agency or any law or court order, or the rules of any applicable securities exchange after first giving notice to Disclosing Party and after taking all practicable steps to co-operate with the Disclosing Party to limit the disclosure to the maximum extent permitted by law.

10.5 Permitted disclosure

Each party may disclose Confidential Information to any of its employees, contractors or advisers on a need to know basis as long as each such recipient is bound by obligations of confidence substantially the same as contained in

this Agreement.

10.6 Exceptions

The obligations under this clause 10 shall not apply to Confidential Information which (whether before or after execution of this Agreement):

- is publicly known and made generally available in the public domain through no breach of this Agreement by the Recipient;
- is already in the possession of the Recipient at the time of disclosure by the Disclosing Party as shown by the Recipient's files and records immediately prior to the disclosure;
- is acquired or received by the Recipient from a third party lawfully in possession of such information and without breach of such third party's obligations of confidentiality to the Disclosing Party; or
- is independently developed by the Recipient without use or reference to the Disclosing Party's Confidential Information, as shown by documents and other competent evidence in the Recipient's possession.

11. Intellectual Property Rights

11.1 Ownership of Intellectual Property Rights

- All Intellectual Property Rights which are owned by either party as at the date of this Agreement will at all times remain owned by that party exclusively and nothing in this Agreement may be construed as transferring the ownership of the Intellectual Property Rights of one party to another.
- Nothing in this Agreement confers on the Customer any rights, title or interest in, or licence to use, GOTO PLUS's Intellectual Property Rights.

11.2 GOTO PLUS Software

The Customer acknowledges and agree that:

- GOTO PLUS Software is Confidential Information of GOTO PLUS and the Customer must not use or disclose any Confidential Information without GOTO PLUS's prior written consent;
- it will not attempt to assign, transfer, lease or rent the GOTO PLUS Software to any third party;
- it will not attempt to modify or create any derivative work of the GOTO PLUS Software;
- it will not remove, modify or obscure any copyright, trade mark or other proprietary rights notices that are contained in or on the GOTO PLUS Software;
- it will not reverse assemble, disassemble, reverse engineer or otherwise attempt to access or derive the source code, the underlying ideas, algorithms, structure or organisation of the GOTO PLUS Software; and
- it will indemnify and hold GOTO PLUS harmless from all claims, of whatever nature, made by any third party arising from or in connection with any improper, unlawful or unauthorised use of or dealing with the GOTO PLUS Software, by the Customer.

11.3 Licence to use Hotel Data

The Customer grants GOTO PLUS the right to use Hotel Data for its commercial purposes, on condition that data is only used on an aggregated basis and otherwise in such a way that the identity of the Customer (if an individual), Customer Users and Guests are not readily ascertainable.

12. Termination

12.1 Termination

Either party may terminate this Agreement:

- if the other party has committed a material breach of this Agreement and either:
 - the breach is not remedied within 14 days of the date written notice of the breach is served on the breaching party; or
 - the breach is not capable of remedy
 - (for the purposes of this clause 12.1(a), a failure to pay any amount on the due date for payment is a material breach, and a request from GOTO PLUS's billing team to make the payment after the due date constitutes notice served under subclause (i));
- immediately if customer suffers an Insolvency Event;
- in accordance with clause 13.2 (Force Majeure Event); or
- at any time by giving the other party 30 days' prior written notice.

12.2 GOTO PLUS Termination

GOTO PLUS may terminate this Agreement immediately if the Customer breaches any condition in clause 3.2.

12.3 Actions on termination

On termination of this Agreement:

- the Customer must cease using the Products and any associated login or passwords;
- GOTO PLUS may invoice the Customer in respect of any Products provided prior to the date of termination which have not been invoiced; and
- all unpaid Fees owing to GOTO PLUS will become immediately due and payable.

12.4 Retrieval of Hotel Data

If the Customer wants to retain any Hotel Data stored in the Products it must be downloaded prior to termination of the Agreement or requested from GOTO PLUS within 30 days thereafter. The Customer acknowledges that after such time, GOTO PLUS will delete the Hotel Data.

13. Force Majeure

13.1 No liability

Where any failure or delay by a party (**Affected Party**) in the performance of its obligations (excluding payment obligations) under this Agreement is caused,

directly or indirectly, by a Force Majeure Event:

- the Affected Party must as soon as practicable give the other party written notice of that fact;
- the Affected Party is not liable for that failure or delay; and
- the Affected Party's obligations under this Agreement is suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event.

13.2 Termination for Force Majeure Event

If the Force Majeure Event continues for more than 30 consecutive days, while it continues, either party may terminate this Agreement by giving written notice to the other.

14. Limitation of liability

14.1 No Consequential Loss

Unless expressly stated to the contrary in this Agreement, neither party is liable to the other for any Consequential Loss however caused in connection with or related to this Agreement or the otherwise in respect of the Products.

14.2 Resupply of Products

Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of liability under such condition or warranty, the condition or warranty is deemed to be included. The liability of GOTO PLUS for any breach of such condition or warranty is limited, at the option of the Customer, to one or more of the following:

- if the breach relates to Products:
 - the replacement of the Products or the supply of equivalent Products;
 - the repair of such Products;
 - the payment of the cost of replacing the Products or of acquiring equivalent Products; or
 - the payment of the cost of having the Products repaired; and
- if the breach relates to Services:
 - the supplying of the Services again; or
 - the payment of the cost of having the Services supplied again.

14.3 Limitation of liability

- GOTO PLUS's total aggregate liability in respect of all claims made under this Agreement (including in respect of any claims in tort or negligence) is limited to the total Fees paid by the Customer in the preceding 2 months.
- The limitations of liability in this clause do not apply to the indemnity in clause 15, or in relation to any liability arising as a result of:
 - the death or personal injury of a person, caused in each case by GOTO PLUS or its employees; or
 - GOTO PLUS's fraudulent or criminal actions.

15. Indemnity

15.1 Indemnity

GOTO PLUS indemnifies and will hold the Customer harmless against any claim that the Products, or the Customer's use of the Products in accordance with this Agreement, infringes the Intellectual Property Rights of a third party (**Indemnity Claim**).

15.2 Notification

GOTO PLUS has no liability in respect of an Indemnity Claim under clause 15.1 unless the Customer complies with the following conditions:

- as soon as reasonably practicable after becoming aware of an Indemnity Claim and in any event within 5 Business Days, the Customer must notify GOTO PLUS in writing, providing details of the Indemnity Claim;
- the Customer must make no admission of liability; and
- the Customer must fully assign to GOTO PLUS the right to defend or compromise any claim, acting in its absolute discretion.

16. Disputes

16.1 Dispute resolution prior to litigation

- The parties must exhaust the following provisions before initiating any legal proceedings (which must be conducted in English).
- When a dispute arises, the disputing party must give notice in writing to the other party setting out in detail the nature of the dispute.
- The parties must use reasonable endeavours and act in good faith to resolve the dispute notified under clause (a) by negotiation between a senior manager of each of them.
- If senior managers of the parties have not resolved any dispute within 20 Business Days of notification of the dispute, either party may take such additional action as it deems necessary to resolve the dispute, including initiating legal proceedings.

16.2 Interlocutory relief

Nothing in this clause 16 prevents a party from seeking urgent interlocutory relief from a court at any time.

17. Insurance

- The parties must each take out and maintain valid and enforceable insurance policies in such amounts and covering such risks as may be customary for businesses of their size.
- Each party, at the other's request, must provide to the other party a certificate of currency from its insurer certifying that it complies with the requirements of this clause 17.

18. General

18.1 No assignment

Neither party may assign, charge or deal with any of its rights and obligations under this Agreement or attempt or purport to do so, without the prior written consent of the other party, which must not be unreasonably withheld or delayed.

18.2 Change in Control

If a change in Control occurs in respect of the Customer and the new controller is (a) a competitor to GOTO PLUS or (b) poses a material threat to GOTO PLUS's business or the Customer sells the Property, GOTO PLUS may terminate this Agreement and the supply of any Products or Services by providing prior written notice to the Customer.

18.3 Notices

- A notice or other communication required or permitted to be given by one party to another must be in writing and:
 - delivered personally;
 - sent by pre-paid mail to the address of the addressee specified in this Agreement; and
 - sent by email to an email address previously used or advised by the other party.
- A notice or other communication is taken to have been given:
 - if delivered personally, immediately upon delivery;
 - if mailed, on the second Business Day after posting; and
 - if emailed, on the date sent, unless the recipient is able to demonstrate that the email failed to be delivered.
- The parties' respective contact details for notification under this Agreement are as set out in the Registration Form for the Customer.
- A party may change its address for service by giving written notice to the other parties.

18.4 Governing law and jurisdiction

This Agreement is governed by the laws of, and each party submits to the exclusive jurisdiction of the courts in:

- London if the Customer is principally located in Europe, the Middle East or Africa;
- Dallas, Texas if the Customer is principally located in the USA, Canada, Central or South America; and
- New South Wales, Australia if the Customer is principally located anywhere else in the world.

18.5 Further assurance

Each party must, from time to time, do all things (including executing all documents) necessary or desirable to give full effect to this Agreement. Each party acknowledges that it has had the opportunity to obtain legal advice in

connection with this Agreement.

18.6 Variation

This Agreement may not be amended or varied except by written agreement.

18.7 Counterparts and facsimile signatures

- This Agreement may be executed in any number of counterparts, each of which when so executed will be deemed to be an original and all of which taken together will constitute one and the same agreement.
- The transmission by a party:
 - by email, fax or other electronic means of an executed copy of this Agreement; or
 - the electronic execution and transmission by any generally accepted and secure means of affixing electronic signatures,
- will be deemed proof of signature of the original for the purposes of constituting a binding agreement between the parties, and the signed copy or electronic copy so transmitted will be deemed the original for the purposes of this Agreement.

18.8 Attorneys

Each attorney and any other individual executing this Agreement on behalf of a party warrants that he or she has full and proper authority to do so and is not aware of any revocation or suspension of the relevant power of attorney or other authorisation.

18.9 Whole agreement

This Agreement:

- is the whole agreement between the parties; and
- supersedes all oral and written communications by or on behalf of any of the parties in relation to the subject matter of this Agreement.

18.10 No reliance on warranties and representations

In entering into this Agreement, each party acknowledges that:

- it has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Agreement other than as expressly stated in this Agreement; and
- it has relied entirely on its own enquiries in relation to the subject matter of this Agreement.

18.11 Survivability

Each indemnity, in addition to the covenants, conditions and provisions which are capable of having effect after the expiration or termination of this Agreement, will remain in full force and effect.

18.12 Severance

If any part of this Agreement is legally unenforceable, this Agreement does not include it. The remainder of this Agreement continues in full force.

18.13 No merger

Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.

18.14 Consent

Other than when providing consent to assignment under clause 18.1, where this Agreement gives GOTO PLUS a right or power to consent or approve in relation to a matter under this Agreement, GOTO PLUS may withhold any consent or approval or give consent or approval conditionally or unconditionally and in its absolute discretion. The party seeking consent or approval must comply with any conditions GOTO PLUS imposes on its consent or approval.

18.15 Relationship

The parties agree that this Agreement does not create any relationship of partnership or employment, franchise, joint venture or agency and that GOTO PLUS is an independent contractor.

18.16 No waiver

A delay or failure by a party in exercising a right, power or remedy arising under, or in connection with, this Agreement will not be considered a waiver of such party's right, power or remedy. Any waiver must be in writing and signed by the party granting the waiver and it is only effective to the extent set out in that waiver.

– END TERMS –